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

Determination

REXFORD SCHNEIDER,

a Justice of the New Paltz Town Court, Ulster County.

THE COMMISSION:

Victor A. Kovner, Esq.*
Honorable Myriam J. Altman
Henry T. Berger, Esq.
John J. Bower, Esq.
Honorable Carmen Beauchamp Ciparick
E. Garrett Cleary, Esq.
Dolores Del Bello
Honorable Isaac Rubin
Honorable Eugene W. Salisbury
John J. Sheehy, Esq.

APPEARANCES:

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

John G. Sisti for Respondent

The respondent, Rexford Schneider, a justice of the New Paltz Town Court, Ulster County, was served with a Formal

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*Mr. Kovner resigned on December 31, 1989. The vote in this matter was on December 15, 1989.

Written Complaint dated October 26, 1988, alleging that he denied defendants basic, well-established rights and conveyed the impression that he was biased against them. Respondent filed an answer dated November 18, 1988.

By order dated December 2, 1988, the Commission designated Carroll J. Mealey, Esq., as referee to hear and report proposed findings of fact and conclusions of law. A hearing was held on March 30, April 17 and 27 and May 2, 1989, and the referee filed his report with the Commission on August 8, 1989.

By motion dated October 4, 1989, the administrator of the Commission moved to confirm in part and disaffirm in part the referee's report, to adopt additional findings and conclusions and for a determination that respondent be removed from office. Respondent opposed the motion by cross motion on October 27, 1989.

On December 15, 1989, the Commission heard oral argument, at which respondent appeared by counsel, 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. The charge is not sustained and is, therefore, dismissed.

As to Charge II of the Formal Written Complaint:

2. Respondent has been a justice of the New Paltz Town Court for 24 years.

3. On October 28, 1986, respondent arraigned David Ortiz on a charge of Loitering and remanded him to jail in lieu of $250 bail.

4. Mr. Ortiz returned to respondent's court on October 31, 1986, and requested an adjournment to obtain an attorney. Respondent granted the adjournment and returned the defendant to jail.

5. On November 7, 1986, Mr. Oritz again appeared before respondent and pled guilty to the charge. Respondent sentenced him to 15 days in jail.

6. After Mr. Ortiz was returned to the Ulster County Jail, Sgt. Raymond Acevedo of the sheriff's department called respondent and told him that Mr. Ortiz had already served one day more than the maximum of 10 days which would be served on a 15-day sentence with time off for good behavior. Sergeant Acevedo told respondent that Mr. Ortiz should have been released at the court and that he intended to release him.

7. Respondent said that he wanted Mr. Ortiz to remain at the jail until the following Monday because he had no place to go. Respondent told the sergeant to change the sentence on the commitment order to 20 days.

8. Fifteen days was the maximum sentence for the violation of which Mr. Ortiz had been convicted, pursuant to Section 70.15(4) of the Penal Law, and Sergeant Acevedo informed respondent that 20 days exceeded the maximum sentence.

9. Respondent was aware that the maximum sentence was 15 days but repeated that he wanted the commitment order changed to 20 days so that the defendant could be held over the weekend.

10. Sergeant Acevedo changed the order to read "20 days, changed by per orders of judge." Mr. Ortiz was released on Monday, November 10, 1986.

11. The remaining allegations of Charge II are not sustained and are, therefore, dismissed.

As to Charge III of the Formal Written Complaint:

12. On November 25, 1986, respondent arraigned John J. Ellingsen on a charge of Harassment and remanded him to jail in lieu of bail.

13. Mr. Ellingsen remained in jail for six days before being released on bail on December 1, 1986.

14. On December 5, 1986, Mr. Ellingsen reappeared before respondent with his mother, Janina. Respondent asked how long Mr. Ellingsen had spent in jail. Ms. Ellingsen informed respondent that her son had been in jail for six days. Respondent replied, "That's his punishment" and released the defendant.

15. Respondent recorded in his court records that Mr. Ellingsen had pled guilty and had been sentenced to time served, even though no plea had been entered by the defendant and no trial had been held.

16. The remaining allegations of Charge III are not sustained and are, therefore, dismissed.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 100.1, 100.2, 100.3(a)(1) and 100.3(a)(4) of the Rules Governing Judicial Conduct and Canons 1, 2, 3A(1) and 3A(4) of the Code of Judicial Conduct. Charges II and III of the Formal Written Complaint are sustained insofar as they are consistent with the findings herein, and respondent's misconduct is established. Charge I is dismissed.

The preponderance of the evidence* establishes that respondent entered a guilty plea and sentenced Mr. Ellingsen to time served in jail awaiting disposition of his case, even though no guilty plea had been entered and no trial held. Both Mr. Ellingsen and his mother testified that the defendant never pled

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*This is the appropriate standard to be applied in judicial disciplinary proceedings. Section 7000.6(i)(1) of the Commission's Operating Procedures and Rules; Matter of Seiffert v. State Commission on Judicial Conduct, 65 NY2d 278, 280 (1985).

guilty but that respondent declared that the six days served was his "punishment." In his testimony in this proceeding, respondent acknowledged that his memory of the Ellingsen case was unclear. The prosecutor had no recollection of the case. The court clerk, the only other witness to testify who was present, indicated that she only remembered respondent sentencing the defendant to time served.

A judge who convicts a defendant without a knowing and voluntary guilty plea or a trial does not comply with the law and denies the defendant the opportunity to be fully heard. See Matter of McGee v. State Commission on Judicial Conduct, 59 NY2d 870, 871 (1983).

Respondent also failed to follow the law when he committed Mr. Ortiz to jail knowing that he had already served a sentence longer than the maximum allowed by law. Respondent exacerbated this misconduct by directing the jailer to change the commitment order to reflect an illegal sentence in order to keep Mr. Ortiz in jail for an additional two days. Even if well-motivated, respondent's acts constituted an abuse of his judicial authority. See Matter of Jutkofsky, 1986 Annual Report 111, 131 (Com. on Jud. Conduct, Dec. 24, 1985).

In imposing sanction, we note respondent's previous censure for requesting or granting special consideration in nine traffic matters. Matter of Schneider, 1 Commission Determinations 335 (Com. on Jud. Conduct, Feb. 16, 1978).

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

Mr. Kovner, Judge Altman, Mr. Berger, Mr. Bower, Judge Ciparick, Mr. Cleary, Mrs. DelBello, Judge Salisbury and Mr. Sheehy concur, except that Mr. Berger and Mrs. DelBello dissent and vote to sustain, in addition, the allegations in paragraph 4(b) of Charge I, paragraph 6 of Charge II and paragraphs 10(a) and 10(c) of Charge III.

Judge Rubin was 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: January 26, 1990

John J. Bower, Esq.
New York State
Commission on Judicial Conduct

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REXFORD SCHNEIDER,

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DISSENTING OPINION
BY MR. BERGER,
IN WHICH
MRS. DEL BELLO JOINS

I respectfully dissent from the determination that the allegations in paragraph 4(b) of Charge I, paragraph 6 of Charge II and paragraphs 10(a) and 10(c) of Charge III were not sustained. Those allegations involve respondent's failure to advise various defendants of their right to assigned counsel if they could not afford counsel or, in the case of paragraph 10(c), respondent's failure to advise defendant or his relatives that bail had been set.

Respondent admits that he did not advise the defendants referred to in these allegations of their right to assigned counsel if they could not afford counsel. In at least two of the cases (Donald Paschall in Charge I and David Ortiz in Charge II), respondent acknowledges that he knew that the defendants were impoverished. In none of the cases did he make any inquiry about the defendants' financial situation.

Respondent's defense to these allegations is that it was his understanding that the public defender did not represent

defendants charged with violations. While it appears that respondent's understanding was incorrect, even if it were correct, the court's obligation extends beyond the policies established by a particular public defender's office. Defendants are entitled to assigned counsel if they are financially unable to afford counsel except if "the accusatory instrument charges a traffic infraction or infractions only." CPL Section 170.10(3)(c). "[T]he court must inform the defendant" of his rights, including the right to assigned counsel. CPL Section 170.10(4)(a). (Emphasis added).

Respondent's failure to advise defendants of their right to assigned counsel was not without consequences. In each of the cases referred to in paragraph 4(b) of Charge I and the Ortiz case in Charge II, the defendants were committed to jail for a period that appears to be in excess of that allowed under CPL Section 30.30(2)(d). Respondent was of the opinion that it was incumbent on the defendants to move for relief if they believed they were being incarcerated for an excessive period. Yet, without the assistance of counsel, which in some cases they were financially unable to obtain, defendants were in no position to seek such relief even if they knew that they were entitled to it.

In paragraphs 10(a) and 10(c) of Charge III, respondent was charged with having failed to advise John Ellingsen of his right to assigned counsel and having failed to advise the defendant that bail had been set.

Respondent admitted that he did not advise Mr. Ellingsen of his right to assigned counsel but denies that he did not advise him that bail had been set. It is undisputed, however, that the defendant's mother pleaded with the court to allow her son to be home with her over Thanksgiving so that she would not be alone and that when she learned the following Monday from the court clerk that bail had been set, she posted bail that same day. The only reasonable conclusion one can draw from these facts is that respondent did not advise Mr. Ellingsen or his mother at the arraignment that bail had been set.

Based on the foregoing, I would find that the allegations set forth in paragraph 4(b) of Charge I, paragraph 6 of Charge II and paragraphs 10(a) and 10(c) of Charge III were sustained.

Dated: January 26, 1990

Henry T. Berger

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