

STATE OF NEW YORK  
COMMISSION ON JUDICIAL CONDUCT

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In the Matter of the Proceeding  
Pursuant to Section 44, subdivision 4,  
of the Judiciary Law in Relation to

**DETERMINATION**

ALEXANDER A. SHANNON,

a Justice of the Nassau Village Court, Rensselaer  
County.

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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  
Cade & Saunders, P.C. (By Larry Rosen) for Respondent

The respondent, Alexander A. Shannon, a justice of the Nassau Village  
Court, Rensselaer County, was served with a Formal Written Complaint dated October  
31, 2000, containing two charges. Respondent filed an answer dated November 15, 2000.

On April 13, 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. The Commission approved the agreed statement on May 10, 2001. Each side submitted memoranda as to sanction. Oral argument was waived.

On June 18, 2001, the Commission considered the record of the proceeding and made the following findings of fact.

1. Respondent has been a justice of the Nassau Village Court since 1987. He has attended and successfully completed all required training sessions for judges sponsored by the Office of Court Administration.

As to Charge I of the Formal Written Complaint:

2. On or about February 23, 1999, respondent precluded the public from observing the small claims hearing in Joseph Hall v. Dennis Rieck.

3. On or about October 5, 1999, without legal justification, respondent closed the courtroom to the public during a plea conference with the defendant in the Driving While Intoxicated case of People v. Mary Ryan.

4. As a matter of practice, respondent frequently ordered that the courtroom be cleared of spectators in order to take a break; however, because respondent continued to hold proceedings during these recesses, he prevented the public from

observing matters which should have been open to the public, and thereby violated Section 4 of the Judiciary Law.

As to Charge II of the Formal Written Complaint:

5. On court nights in November and December 1999 and January 2000, and as a matter of practice, respondent failed to advise defendants, who were charged with misdemeanors, of the right to assigned counsel in the first instance, as required by Section 170.10(4) of the Criminal Procedure Law, but, rather, required defendants first to indicate that they desired counsel before respondent advised them of the right to assigned counsel. Respondent's practice was to advise the defendants at arraignment of their right to an attorney and then adjourn the proceedings; however, he did not at that time advise them of their right to assigned counsel if they could not afford counsel and only did so if they subsequently appeared in court without counsel.

6. In addition, as a matter of practice, respondent failed to assign counsel to defendants who could not afford to retain counsel and who were charged with non-vehicle and traffic violations. Respondent thereby failed to comply with Section 170.10(4) of the Criminal Procedure Law.

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(B)(1) and 100.3(B)(6) of the Rules Governing Judicial Conduct. Charges I and II of the Formal Written Complaint

are sustained, and respondent's misconduct is established.

A judge is required to advise all defendants charged with offenses for which a sentence of a term of imprisonment is authorized, other than vehicle and traffic infractions, of the right to assigned counsel and must take such affirmative steps as are necessary to effectuate the right (Crim Proc Law §170.10[4]; County Law §722-a; Matter of Pemrick, 2000 Ann Report of NY Commn on Jud Conduct 141). With 14 years of experience as a judge, respondent should be familiar with this fundamental principle of law. Respondent's practice of advising defendants of the right to assigned counsel only if they returned without counsel on the adjourned date is contrary to both the letter and spirit of the statutory requirements. Such conduct may effectively thwart the defendants' exercise of their statutory rights and cause unnecessary delays.

Respondent also failed to assign counsel to eligible defendants charged with non-vehicle and traffic infractions (Crim Proc Law §170.10[3][c]). Such defendants may be subject to substantial fines and incarceration. By his conduct, respondent failed to "respect and comply with the law" and to "be faithful to the law" as required by Sections 100.2(A) and 100.3(B)(1) of the Rules Governing Judicial Conduct.

By closing his courtroom during both civil and criminal public proceedings, respondent violated the statutory requirement that court proceedings be open to the public (Jud Law §4). Public trials are intended to safeguard a defendant's right to a fair trial and

to promote public confidence in the integrity of the judicial process. A judge's discretionary power to close the courtroom should "be sparingly exercised and then, only when unusual circumstances necessitate it." People v. Hinton, 31 NY2d 71, 76 (1972).

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

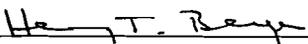
Mr. Berger, Judge Ciardullo, Mr. Coffey, Mr. Goldman, Ms. Hernandez, Judge Luciano, Judge Peters and Judge Ruderman concur.

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

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