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

JOHN F. SKINNER,

a Justice of the Columbia Town Court, Herkimer County.

Determination

THE COMMISSION:

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

APPEARANCES:

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

Carl G. Scalise for Respondent

The respondent, John F. Skinner, a justice of the Columbia Town Court, Herkimer County, was served with a Formal Written Complaint dated June 13, 1996, alleging that he mishandled two criminal cases. Respondent filed an answer dated July 1, 1996.

By order dated August 5, 1996, the Commission designated Vincent D. Farrell, Esq., as referee to hear and report proposed findings of fact and conclusions of law. A hearing was held on October 28, 1996, and the referee filed his report with the Commission on December 20, 1996.

By motion dated January 28, 1997, the administrator of the Commission moved to confirm the referee's report and for a determination that respondent be removed from office. In response, respondent submitted three affidavits on February 14, 1997. The administrator filed a reply dated February 24, 1997. Respondent submitted a "corrected affidavit" by his counsel on March 7, 1997.* The administrator replied by letter dated March 24, 1997.

Oral argument was waived.

On March 27, 1997, the Commission 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 a justice of the Columbia Town Court since 1958. He has attended all training sessions required by the Office of Court Administration.

2. Respondent has known Edward Sterling for 40 years, and they are on a first-name basis. Respondent performed the marriage ceremony for Edward and Linda Sterling in

* Respondent's attempt to supplement the evidentiary record by these affidavits is inappropriate, and they have not been considered in rendering this determination.

1979. In the late 1970s, Ms. Sterling provided nursing care for respondent's father-in-law, who lived with him. Ms. Sterling testified that she and respondent are personal friends. In 1993, respondent had a heart operation, and he believes that Ms. Sterling visited him every day for two months as he was recuperating. Mr. Sterling has also visited respondent several times at his home. Respondent has described the Sterlings as "prominent people in our town...very reputable people."

3. On August 24, 1994, Mr. Sterling was charged with Sexual Abuse, Third Degree, in the Town of Columbia on the complaint of a woman who was delivering a newspaper to his home the previous day.

4. Edward and Linda Sterling then went to respondent's home with the appearance ticket that Mr. Sterling had received. Respondent had not yet received any paperwork in connection with the case. He told Mr. Sterling to appear in court as scheduled.

5. On August 30, 1994, Mr. Sterling was arraigned by respondent. Ms. Sterling appeared in court with her husband, but no one else was present. Mr. Sterling was sworn and denied that he was home when the incident was alleged to have occurred. Ms. Sterling also gave an unsworn statement that she had picked up the newspaper on that day.

6. Based solely on these statements and without notice to or hearing the prosecution, respondent dismissed the charge against Mr. Sterling, contrary to CPL 170.45 and 210.45. He failed to record in his docket any reasons for the dismissal, as is required for a dismissal in the interests of justice under CPL 170.40(2).

7. Respondent knew at the time that it was inappropriate for him to dismiss a case without notice to the prosecution and that his dismissal of the charge against Mr. Sterling was "not quite proper."

8. In the course of the proceeding before the Commission, respondent gave testimony that was inconsistent. At the hearing, he testified that Mr. Sterling denied being home when the newspaper was delivered. During the investigation, respondent testified that Mr. Sterling had said that he was home but that he did not touch the woman.

As to Charge II of the Formal Written Complaint:

9. On November 15, 1994, Jesse L. Bullen, who was then 18 years old, appeared before respondent on a charge of Issuing A Bad Check.

10. Respondent looked at a ticket given to him by Mr. Bullen, then asked the defendant whether he would make good on the check.

11. Mr. Bullen agreed, and respondent told him to bring $335 to court the following week. If he didn't come back with the money, he would go to the "crowbar motel," respondent told Mr. Bullen.

12. Respondent never asked Mr. Bullen to enter a plea and never advised him that he had the right to assigned counsel if he could not afford a lawyer, contrary to CPL 170.10(4)(a).

13. Mr. Bullen did not appear the following week, and respondent issued a warrant for his arrest.

14. Two weeks later, Mr. Bullen was arrested and brought to court. He told respondent that he did not have full restitution for the check. Respondent sentenced him to 30 days in jail. He was released after his mother paid the balance of the restitution and fine.

15. Respondent knew at the time that he is required to advise defendants of their right to assigned counsel. Nonetheless, he testified, it was his practice not to advise defendants that they had a right to assigned counsel unless they said that they could not afford a lawyer. "I don't give my town, my county's money away," he testified. "If he asked me to appoint him an attorney, I'll do that."

16. In the course of the proceeding before the Commission, respondent gave inconsistent and evasive testimony concerning Bullen. At the hearing, he testified that Mr. Bullen had pleaded guilty to the charge. During the investigation, respondent testified that he had found Mr. Bullen guilty based on his willingness to make restitution. When asked at the hearing to reconcile the different versions, he refused to answer and stated, "No comment."

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated the Rules Governing Judicial Conduct then in effect, 22 NYCRR 100.1, 100.2(a), 100.2(b), 100.2(c) and 100.3(a)(1),* and Canons 1, 2A, 2B and 3A(1) of the Code of Judicial Conduct. Charges I and II of the Formal Written Complaint are sustained insofar as they are consistent with the findings herein, and respondent's misconduct is established.

* Now Section 100.3(B)(1).

Respondent summarily disposed of two criminal cases without affording both parties the right to be heard, knowing that he was not following the law. In the Sterling case, moreover, the circumstances demonstrate that he dismissed the charge as a favor to the defendant and his wife, who were social acquaintances.

Favoritism by a judge is "malum in se misconduct constituting cause for discipline...." (Matter of Byrne, 42 NY2d [b], [c] [Ct on the Judiciary]. "It is wrong, and always has been wrong." (Matter of Byrne, supra, at [b]). The granting of special consideration is so serious that even a single instance can warrant removal. (Matter of Reedy v State Commission on Judicial Conduct, 64 NY2d 299, 302; but see, Matter of Edwards v State Commission on Judicial Conduct, 67 NY2d 153, 155).

Respondent also abandoned his proper role as a fair and neutral arbiter when he convicted Mr. Bullen without a plea or trial, thereby ignoring a judge's statutory obligation to advise defendants of their right to assigned counsel and to take the necessary steps to effectuate that right. (See, CPL 170.10[4][a]). The courts and this Commission have long abhorred such abuse of defendants' fundamental rights. (See, Matter of McGee v State Commission on Judicial Conduct, 59 NY2d 870; Matter of Sardino v State Commission on Judicial Conduct, 58 NY2d 286).

Respondent exacerbated his wrongdoing in these two cases by his evasive and disingenuous testimony before the Commission. (See, Matter of Gelfand v State Commission on Judicial Conduct, 70 NY2d 211, 216).

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

Mr. Berger, Ms. Crotty, Mr. Goldman, Judge Newton, Mr. Pope, Judge Salisbury and Judge Thompson concur.

Mr. Coffey dissents as to sanction only and votes that respondent be censured.

Judge Luciano, Judge Marshall and Mr. Sample 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: May 29, 1997

Henry T. Berger, Esq., Chair
New York State
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

JOHN F. SKINNER,

DISSENTING OPINION BY MR. COFFEY

a Justice of the Columbia Town Court, Herkimer County.

The charges against respondent represent only two improper episodes in a judicial career of nearly 40 years. While serious, they do not, in my view, warrant his removal from the bench.

Respondent's misdeeds are not as serious or as extensive as those of other judges who have come before us on similar conduct and were removed. (Compare, Matter of Conti v State Commission on Judicial Conduct, 70 NY2d 416 [judge disposed of 31 cases without notice to the prosecutor, gave favorable dispositions in two cases, altered court documents and gave a "patently false story" when asked to explain his conduct]; Matter of McGee v State Commission on Judicial Conduct, 59 NY2d 870 [judge routinely failed to advise defendants of their rights, occasionally discouraged them from seeking legal advice and, as a standard practice, found defendants guilty without plea or trial]; Matter of Sardino v State Commission on Judicial Conduct, 58 NY2d 286 [in 62 cases, judge deliberately and punitively denied defendants their rights at arraignment, disparaged them in open court and showed pro-prosecution bias]).

In Matter of More (1996 Ann Report of NY Commn on Jud Conduct, at 99), we admonished a judge who dismissed three cases without notice to the prosecutor. Although, as the majority notes, the element of favoritism in this case makes respondent's conduct more serious than that of Judge More, I believe that the more severe sanction of censure is adequate redress.

While respondent's testimony before the Commission appears less than forthcoming, his lack of candor is not as egregious as that of a judge who deliberately lied to an attorney grievance committee investigating his law clerk and was censured (see, Matter of Bloom, 1996 Ann Report of NY Commn on Jud Conduct, at 65) or as that of a judge who suggested to a Commission witness an inaccurate version of the events in question and was admonished (see, Matter of Menard, 1996 Ann Report of NY Commn on Jud Conduct, at 93).

I concur with the majority that Charges I and II are sustained, but, for the foregoing reasons, I respectfully dissent and vote that the appropriate sanction is censure.

Dated: May 29, 1997

Stephen R. Coffey, Esq., Member
New York State
Commission on Judicial Conduct