

**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**

CHARLES E. SMITH,

a Justice of the Shandaken Town Court,  
Ulster County.

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THE COMMISSION:

Henry T. Berger, Esq., Chair  
Helaine M. Barnett, Esq.  
E. Garrett Cleary, Esq.  
Lawrence S. Goldman, Esq.  
Honorable Juanita Bing Newton  
Honorable Eugene W. Salisbury  
John J. Sheehy, Esq.  
Honorable William C. Thompson

APPEARANCES:

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

Arthur E. Teig for Respondent

The respondent, Charles E. Smith, a justice of the Shandaken Town Court, Ulster County, was served with a Formal Written Complaint dated September 30, 1993, alleging that he engaged in an angry and unseemly confrontation off the bench and that he violated the fundamental rights of a defendant in a criminal case. Respondent filed an answer dated October 20, 1993.

On January 18, 1994, the administrator of the Commission, respondent and respondent's counsel entered into an agreed statement of facts pursuant to Judiciary Law §44(5), waiving the hearing provided by Judiciary Law §44(4), stipulating that the Commission make its determination based on the pleadings and the agreed upon facts, jointly recommending that respondent be censured and waiving further submissions and oral argument.

By letter dated March 16, 1994, the Commission rejected the agreed statement without prejudice to its resubmission. On March 30, 1994, the parties submitted an amended agreed statement. On June 9, 1994, the Commission approved the agreed statement as amended and made the following determination.

As to Charge I of the Formal Written Complaint:

1. Respondent has been a justice of the Shandaken Town Court since 1978. He is also chief of the local fire department.

2. On July 11, 1992, the Village of Pine Hill in the Town of Shandaken held its annual street fair. As fire chief, respondent responded to a call for emergency assistance and drove through the street fair. The call proved to be a false alarm. Respondent became angry when he found that the streets were partially blocked by vendors' tables and barricades. He ordered the removal of the tables and barricades.

3. Respondent engaged in an angry confrontation with the organizer of the street fair. As respondent was criticizing the organizer for blocking the streets, the organizer attempted

to walk away. Respondent grabbed him by the shoulders and forcibly turned him around in order to prevent him from leaving.

4. This confrontation was witnessed by numerous people. Twenty-six of them signed statements denouncing respondent's behavior in driving through the fair and confronting the organizer. The confrontation was publicized in a local newspaper.

As to Charge II of the Formal Written Complaint:

5. On July 18, 1991, Richard L. Williams appeared before respondent for arraignment on a charge of Issuing a Bad Check.

6. Respondent violated the defendant's fundamental rights in that he:

a) failed to take steps to effectuate the defendant's right to assigned counsel, in violation of CPL 170.10(4) and (6);

b) convicted the defendant at arraignment without either a formal guilty plea or a trial;

c) sentenced the unrepresented defendant to restitution of \$554 and 90 days in jail in lieu of payment of a fine, even though the maximum sentence in lieu of fine or restitution, or both, was one month, pursuant to Penal Law §70.15(2) and CPL 420.10(4)(b);

d) failed to resentence the defendant after he informed respondent that he was unable to pay a fine and restitution, as required by CPL 420.10(5);

e) failed to accord the prosecutor, defense counsel or the defendant an opportunity to make a statement with respect to any matters relevant to sentence, as required by CPL 380.50;

f) failed to adjourn the matter and sentenced the defendant without the benefit of a presentence report or a fingerprint report, contrary to CPL 380.30;

g) failed to inquire, before pronouncing sentence, whether the defendant desired an adjournment, as required by CPL 380.30;

h) failed to advise the defendant that respondent intended to treat the accusatory instrument as the basis for sentencing the defendant on multiple charges, even though it referred to only a single instance and a single fraudulent check, and failed to advise the defendant that any admission that he made concerning the single allegation charged in the accusatory instrument would be regarded as a guilty plea to more than one charge; and,

i) gave the defendant inadequate notice as to the pending charge in the accusatory instrument, convicted the defendant and imposed sentence on unwritten charges, failed to advise the defendant that respondent would treat each check as a separate charge and failed to ask the defendant to plead to each of what respondent was treating as separate charges.

As to Charge III of the Formal Written Complaint:

7. By his conduct in People v Richard L. Williams on July 18, 1991, respondent conveyed the appearance of bias.

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(a), 100.3(a)(1) and 100.3(a)(4), and Canons 1, 2A, 3A(1) and 3A(4) of the Code of Judicial Conduct. Charges I, II and III of the Formal Written Complaint are sustained, and respondent's misconduct is established.

Respondent's angry and unseemly confrontation at a street fair diminished respect for the judiciary. "Any conduct, on or off the Bench, inconsistent with proper judicial demeanor subjects the judiciary as a whole to disrespect and impairs the usefulness of the individual Judge to carry out his or her constitutionally mandated function." (Matter of Kuehnel v State Commission on Judicial Conduct, 49 NY2d 465, 469). Respondent's physical treatment of the fair organizer was improper and undermined his effectiveness on the bench since he engaged in conduct that he is often required to judge. (See, Matter of Wray, 1992 Ann Report of NY Commn on Jud Conduct, at 77, 80).

By his summary treatment of Mr. Williams at arraignment, respondent ignored important procedural requirements, denied the defendant fundamental rights, abused his powers as a judge and abandoned his proper role as a neutral and detached magistrate (see, Matter of Wood, 1991 Ann Report of NY Commn on Jud Conduct, at 82, 86). A pattern of such conduct in numerous cases might well lead to removal. (See, Matter of McGee v State Commission on Judicial Conduct, 59 NY2d 870).

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

All concur.

#### 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: June 16, 1994

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