

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

LOUIS D. SMITH,

a Justice of the Ellenburg Town Court,
Clinton County.

Determination

THE COMMISSION:

Henry T. Berger, Esq., Chair
Jeremy Ann Brown
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
Honorable William C. Thompson

APPEARANCES:

Gerald Stern for the Commission

Alexander Lesyk for Respondent

The respondent, Louis D. Smith, a justice of the Ellenburg Town Court, Clinton County, was served with a Formal Written Complaint dated April 17, 1997, alleging that he mishandled a criminal case. Respondent answered the Formal Written Complaint by letter dated May 20, 1997.

On July 28, 1997, 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 agreed upon facts, jointly recommending that respondent be censured and waiving further submissions and oral argument.

On September 11, 1997, the Commission approved the agreed statement and made the following determination.

1. Respondent has been a justice of the Ellenburg Town Court since January 1996. He also served as town justice for two years in the late 1970s.
2. Roger O'Dell, Jr., was charged with Harassment on the complaint of his estranged wife, Carol. The matter was returnable in respondent's court.
3. Before Mr. O'Dell's initial court appearance, respondent spoke with him ex parte by telephone. Respondent told Mr. O'Dell that the charge would be adjourned in contemplation of dismissal if he pleaded guilty, then accepted a guilty plea over the telephone without conducting an arraignment, as required by CPL 170.10(1).
4. Respondent did not notify the prosecution or the complaining witness that the defendant had pleaded guilty to the charge or that he intended to grant an adjournment in contemplation of dismissal. Instead, he instructed Ms. O'Dell to appear in court on February 5, 1996, and to bring two of the couple's minor children, who had allegedly witnessed the incident that led to the Harassment charge. This created the reasonable impression to Ms. O'Dell that she and her children would be testifying at trial.

5. On February 5, 1996, respondent called Ms. O'Dell into chambers before the defendant arrived and questioned her concerning the couple's separation. He did not inform her that Mr. O'Dell had pleaded guilty and that no trial would be held.

6. After Mr. O'Dell arrived, respondent talked with him and the complaining witness. He said that Ms. O'Dell needed to be "more understanding" of Mr. O'Dell's job as a truck driver. He told her that it was her responsibility to provide a "nice home" for the defendant, even though the couple did not live together.

7. Respondent still did not tell Ms. O'Dell that the defendant had pleaded guilty, conveying the reasonable impression that he was presiding over a hearing.

8. Even though Mr. O'Dell had already pleaded guilty, respondent required their minor children to answer questions regarding the incident that led to the charge. An emotional confrontation ensued, in which Mr. O'Dell called his children liars.

9. Respondent also questioned the person who had driven Ms. O'Dell to court concerning his relationship with her.

10. Respondent then granted Mr. O'Dell an adjournment in contemplation of dismissal without giving notice to or hearing the prosecution and without obtaining the consent of the prosecution, as required by CPL 170.55(1), and even though Mr. O'Dell had pleaded guilty.

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),

100.2(C), 100.3(B)(1), 100.3(B)(4) and 100.3(B)(6), and Canons 1, 2A, 2B, 3A(1) and 3B(4) of the Code of Judicial Conduct. Charge I of the Formal Written Complaint is sustained, and respondent's misconduct is established.

Respondent's extraordinary handling of the O'Dell case encompassed a series of legal and procedural errors and improper statements that compromised his impartiality and the proper administration of justice. (See, Matter of Spiehs, 1988 Ann Report of NY Commn on Jud Conduct, at 222, 224).

Respondent spoke ex parte with the defendant and, without notice to or hearing the prosecution, disposed of the case over the telephone, granting a disposition that was legally contradictory: a guilty plea and an adjournment in contemplation of dismissal. Even though there was then no need for a trial, he required the complaining witness to come to court and engaged her in an ex parte conversation in which he elicited irrelevant, personal information. Then, in a conversation with the O'Dells outside the presence of the prosecution, he made statements indicating sexual bias that were immaterial to the court case, and he unnecessarily questioned the couple's children and a man who had driven the complaining witness to court. Since he had never informed Ms. O'Dell that the case had been disposed of earlier over the telephone, respondent gave her the reasonable impression that he was conducting a hearing. And the adjournment in contemplation of dismissal, without notice to the prosecution or an opportunity to be heard, was also improper. (See, CPL 170.55[1]).

A judge should be and appear to be a neutral and impartial arbiter. (Matter of Sardino v State Commission on Judicial Conduct, 58 NY2d 286, 290; Matter of Wood, 1991

Ann Report of NY Commn on Jud Conduct, at 82, 86). The judge should hear both sides to a dispute in court, then adjudicate issues duly brought by the parties. Even if well-motivated, respondent's misguided attempts to mediate what he apparently perceived as the O'Dells' family problems were outside his proper role as a judge. In his zeal, he violated the law and cast doubt on his ability to be unbiased. (See, Matter of Edwards, 1987 Ann Report of NY Commn on Jud Conduct, at 85, 87).

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

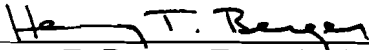
Mr. Berger, Ms. Brown, Ms. Crotty, Mr. Goldman, Judge Luciano, Judge Marshall, Judge Newton, Mr. Pope, Judge Salisbury and Judge Thompson concur.

Mr. Coffey dissents and votes to reject the agreed statement on the basis that admonition would be the appropriate sanction on these facts.

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: October 29, 1997


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