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

W. HOWARD SULLIVAN,

a Judge of the Norwich City Court, Chenango County.

Determination

THE COMMISSION:

Mrs. Gene Robb, Chairwoman
Honorable Fritz W. Alexander, II
John J. Bower, Esq.
David Bromberg, Esq.
E. Garrett Cleary, Esq.
Dolores DelBello
Victor A. Kovner, Esq.
Honorable William J. Ostrowski
Honorable Isaac Rubin
Honorable Felice K. Shea
Carroll L. Wainwright, Jr., Esq.*

APPEARANCES:

Gerald Stern (Albert B. Lawrence, Of Counsel) for the Commission

McMahon & McMahon (By John L. McMahon) for Respondent

The respondent, W. Howard Sullivan, serves part-time as a judge of the Norwich City Court. He is also a partner in the law firm of Stratton & Sullivan. Respondent was served with a Formal Written Complaint dated May 10, 1982, alleging inter alia that he failed to disqualify himself in certain cases

* Mr. Wainwright's term as a member of the Commission expired on March 31, 1983. The vote in this case was held on February 16, 1983.

involving his law firm. Respondent filed an answer dated June 21, 1982.

By order dated July 20, 1982, the Commission designated Bernard Goldstein, Esq., as referee to hear and report proposed findings of fact and conclusions of law. The hearing was held on September 9 and October 8, 1982, and the referee filed his report with the Commission on November 18, 1982.

By motion dated January 21, 1983, the administrator of the Commission moved to confirm in part and to disaffirm in part the referee's report, and for a determination that respondent be censured. Respondent opposed the motion and moved that the referee's report be confirmed and that respondent be admonished. Respondent waived oral argument.

The Commission considered the record of the proceeding on February 16, 1983, and made the following findings of fact.

As to Charge I of the Formal Written Complaint:

1. In April 1979, Elaine Henderson visited respondent at his law firm, Stratton & Sullivan, for a consultation on a legal matter.

2. In July 1979, Ms. Henderson received a bill from Stratton & Sullivan for $87.50 for the consultation. Ms. Henderson thereafter left a message with the firm that the bill was a mistake because it was her understanding that the consultation was without charge.

3. In December 1979 Ms. Henderson received a second statement from Stratton & Sullivan for the $87.50.

4. Respondent authorized his law firm to refer Ms. Henderson's unpaid bill to a collection agency.

5. In May 1981, Ms. Henderson was served a summons in the matter of Stratton & Sullivan v. Thomas and Elaine Henderson. Stratton & Sullivan was represented in this action by the law firm of Singer, Singer & Larkin.

6. On May 19, 1981, Ms. Henderson paid the $87.50 directly to Stratton & Sullivan by delivering to the firm's mailbox two money orders totaling that amount. Approximately one week later, Ms. Henderson received a letter from Singer, Singer & Larkin, acknowledging the $87.50 payment and seeking an additional $21.70 in costs.

7. On June 23, 1981, respondent authorized his court clerk to sign a default judgment against Ms. Henderson, notwithstanding that he knew his firm was the plaintiff in the matter, and notwithstanding that the debt had already been paid to his firm. Respondent knew at the time it was improper for him to authorize entry of the judgment.

8. On August 5, 1981, Ms. Henderson called the president of the Chenango County Bar Association, Edmund Lee, to file a complaint against respondent. Mr. Lee did not advise Ms. Henderson of the procedure for filing a complaint. He offered to call respondent to see what could be done to resolve the matter.

9. Respondent and Mr. Lee discussed the matter and agreed that the matter should be settled on an informal basis. Respondent authorized Mr. Lee to negotiate with Ms. Henderson to try to resolve the matter. Respondent told Mr. Lee he was willing to pay Singer, Singer & Larkin their expenses, and to have the judgment against Ms. Henderson vacated. Respondent proposed that, in return, Ms. Henderson not file any charges against him.

10. Mr. Lee advised Ms. Henderson of respondent's position, and on August 12, 1981, he advised Ms. Henderson's attorney, Mary Beth Fleck, of respondent's position.

11. On October 5, 1981, after an inquiry from Singer, Singer & Larkin, respondent sent that firm a check to cover its expenses in handling the Stratton & Sullivan v. Henderson case. On October 9, 1981, Singer, Singer & Larkin entered a satisfaction of judgment in the case, and on October 15, 1981, Ms. Henderson was notified thereof.

12. Respondent did not vacate the default judgment he had ordered against the Hendersons on June 23, 1981.

As to Charge II of the Formal Written Complaint:

13. Respondent presided over the following traffic matters, notwithstanding that, as an attorney, he had previously represented each of the defendants:

(a) People v. Tim B. Danaher, June 11, 1981;

(b) People v. Dan Ohl, June 18, 1981;

(c) People v. Wilma F. Yocum, June 18, 1981;

(d) People v. Daniel M. Anderson, June 26, 1981;

(e) People v. Megan M. Martin, June 26, 1981;

(f) People v. Bruce A. Osterhout, June 29, 1981; and

(g) People v. Flora S. Evans, August 25, 1981.

As to Charge III of the Formal Written Complaint:

14. Roger Monaco is an associate at respondent's law firm. Mr. Monaco appeared before an acting Norwich City Court judge in summary proceedings as to Edwards v. McKenna and Cooper v. Butts. Respondent failed to take appropriate steps to prohibit an associate of his from practicing in the Norwich City Court, as required by the Rules Governing Judicial Conduct.

As to Charge IV of the Formal Written Complaint:

15. On September 10, 1981, respondent presided over a non-jury trial in Miles v. Cappadonia. The plaintiff in this case was represented by Singer, Singer & Larkin. At the time of the trial, Singer, Singer & Larkin was also representing respondent's law firm in Stratton & Sullivan v. Thomas and Elaine Henderson.

16. Respondent did not inform the parties in Miles v. Cappadonia of his association with Singer, Singer & Larkin. After presiding over the trial, respondent entered a judgment in favor of the plaintiff.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Section 14 of the Judiciary Law, Sections 100.1, 100.2, 100.3(a)(1), 100.3(c)(1) and 100.5(f) of the Rules Governing Judicial Conduct and Canons 1, 2, 3A(1) and 3C(1) of the Code of Judicial Conduct. Charges I through IV of the Formal Written Complaint are sustained (except for those portions of Charge II relating to People v. Russell McIntyre and People v. Betty S. Martin, which are not sustained and therefore are dismissed), and respondent's misconduct is established.

A judge's obligation to be and appear impartial in matters before the court is fundamental to public confidence in the administration of justice. Specifically, a judge is prohibited from participating in any case in which he has an interest or in which his impartiality might otherwise be reasonably questioned. (Section 14 of the Judiciary Law and Section 100.3[c] of the Rules Governing Judicial Conduct.) In addition, a part-time judge who also practices law is prohibited from practicing in his own court, and he is obliged to insure that his partners and associates do not practice in his court, regardless of who presides. (Section 100.5[f] of the Rules.)

Respondent violated the applicable ethical provisions cited above (i) by authorizing a judgment against the defendant in a case in which his own law firm was the plaintiff, (ii) by presiding over seven cases involving clients of his law firm, (iii) by

allowing one of his associates to appear in two cases before a co-judge in respondent's own court and (iv) by presiding over a case involving a law firm which was contemporaneously representing respondent's own firm in another matter. See, Matter of Harris v. State Commission on Judicial Conduct, 56 NY2d 365 (1982).

Respondent exacerbated his misconduct by suggesting that he would withdraw the judgment he authorized against the defendants in Stratton & Sullivan v. Thomas and Elaine Henderson in return for Ms. Henderson's forgoing any grievances or legal claims against him. The powers and prestige of judicial office are not meant as barter for the advancement of a judge's personal interests. (Section 100.2 of the Rules.)

The Commission notes that respondent acknowledges his misconduct and expresses his intention to adhere to the applicable rules.

By reason of the foregoing, the Commission determines that respondent should be censured.

Mrs. Robb, Judge Alexander, Mr. Bower, Mr. Bromberg, Mrs. DelBello, Judge Ostrowski, Judge Shea and Mr. Wainwright concur.

Mr. Cleary, Mr. Kovner and Judge Rubin 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: April 22, 1983

Lillemor T. Robb

Lillemor T. Robb, Chairwoman
New York State Commission on
Judicial Conduct