

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

JOSEPH C. TERESI,

DETERMINATION

a Justice of the Supreme Court, Third Judicial District,
Albany County.

THE COMMISSION:

Honorable Eugene W. Salisbury, Chair
Henry T. Berger, Esq.
Jeremy Ann Brown, C.A.S.A.C.
Stephen R. Coffey, Esq.
Lawrence S. Goldman, Esq.
Christina Hernandez, M.S.W.
Honorable Daniel F. Luciano
Honorable Frederick M. Marshall
Honorable Karen K. Peters
Alan J. Pope, Esq.
Honorable Terry Jane Ruderman

APPEARANCES:

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

Roche, Corrigan, McCoy & Bush (By Robert P. Roche) for Respondent

The respondent, Joseph C. Teresi, a justice of the Supreme Court, Third
Judicial District, Albany County, was served with a Formal Written Complaint dated
September 26, 2000, containing four charges.

On November 17, 2000, 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, jointly recommending that respondent be censured and waiving further submissions and oral argument.

On December 14, 2000, the Commission approved the agreed statement and made the following determination.

1. Respondent has been a justice of the Supreme Court since 1994.

As to Charge I of the Formal Written Complaint:

2. On June 18, 1997, in Smith v. Smith, the parties appeared with counsel before respondent, each having cross-moved through their attorneys for an order of contempt as against the other and having submitted papers and affidavits to support their respective claims. Cynthia Smith, the defendant, while admitting the facts on which the contempt was based, asserted that she had justification for her conduct and that therefore it should not be contemptuous. Terry Smith, the plaintiff, while admitting that he had been at the same housing development and examined the same unit that his wife had looked at hours before, contended in his papers and through his attorneys that this conduct was no more than a coincidence, did not constitute stalking and did not violate the prior court order; he adamantly denied the remaining allegations against him.

Respondent, without holding a factual hearing and relying solely on the representations in the papers and the parties' unsworn oral statements, found both parties guilty of contempt for failure to abide by a previous court order. Respondent set a sentencing date for July 11, 1997.

3. On or about June 23, 1997, after the parties were ordered to exchange personal property at the marital residence under the supervision of their attorneys, respondent asked each of the respective attorneys to send him *ex parte* a report concerning the exchange. If the exchange of property had gone well, it was the intention of the court to purge the respective parties of contempt before sentencing. The attorneys were requested to communicate with the court directly in response to the court's inquiry and were specifically directed not to exchange the affidavits with one another. The reports delivered to the court *ex parte* by the respective attorneys described the exchange of property as acrimonious.

4. On or about July 11, 1997, Terry Smith, the plaintiff, moved for reargument of the contempt finding based on the court's failure to hold a factual hearing. Respondent denied the motion and sentenced Mr. Smith to one day in jail for contempt. Thereafter, respondent sentenced the defendant Cynthia Smith to one weekend in jail for her contempt. No further action was brought by the attorneys for either side to stay the imposition of the sentence or to cure or purge their respective clients of contempt.

As to Charge II of the Formal Written Complaint:

5. On or about November 21, 1997, in Robert Marini Builders, Inc. v. Charles J. Rao v. Ronald G. Loeber et al., respondent granted a default judgment against the third-party defendant, Ronald Loeber, a *pro se* litigant, and ordered him to execute a deed (represented to the court to be a corrective deed) to real property. It was the position of the litigant that such deed would extinguish Mr. Loeber's water easement. This action by respondent did not take into account that: (a) Mr. Loeber's time to answer the amended third-party complaint, which was not before the court at the time of the hearing, had not expired and therefore he was not in default; (b) Mr. Loeber had appeared in court and expressed in writing and orally his intention to defend the action on the merits; (c) Mr. Loeber, as the third-party defendant, would only be held liable for indemnity if Mr. Rao were ultimately found liable on the claim, and no such finding of liability had as yet been made; and (d) the effect of the corrective deed on the extinguishment of the water easement was not sufficiently clarified so as to allow the court to rule in such a summary fashion on that issue.

6. On or about December 30, 1997, respondent found Mr. Loeber in contempt of court and sentenced him to six months in jail for his refusal to sign an instrument represented to the court as a corrective deed, which had been drafted by the opposing party. Prior to respondent's contempt determination, Mr. Loeber had appeared before respondent three times and respondent had spoken to an attorney, whom Mr.

Loeber represented to be his attorney, who informed the court *ex parte* that he had advised Mr. Loeber to sign the corrective deed. At the time of sentencing for contempt, Mr. Loeber asserted that he still had objections to the terms of the proposed corrective deed, although in his *pro se* capacity he was not capable of enunciating his position to respondent's satisfaction. The court did not make a separate written order of contempt containing the necessary provisions, as required by Sections 755 and 774 of the Judiciary Law, as to the manner in which Mr. Loeber, during the pendency of his incarceration, could purge himself of the contempt. Mr. Loeber was incarcerated in the Albany County Jail, where he remained for 45 days until another court acted upon an application to release him from custody brought by his newly retained attorney.

As to Charge III of the Formal Written Complaint:

7. On September 4, 1996, in Rachel Anglin v. Harold Anglin, respondent interrupted the testimony of plaintiff's expert witness and required all the attorneys to meet in chambers for a conference. After the conference commenced, respondent requested that the female associate of the attorney for the defendant be excluded from chambers. While in chambers, respondent applied pressure in an injudicious and indiscriminate manner to settle the matter by expressing in colorful terms his displeasure with the course of the testimony and his belief that the court's time was being wasted by the proceeding. Respondent's actions thereby forced a settlement of the issues between the respective parties.

As to Charge IV of the Formal Written Complaint:

8. On or about July 10, 1998, at a pre-trial conference in Diorio v.

Diorio in Ulster County Supreme Court, respondent impatiently observed that the parties were wasting the court's time on matters that should long since have been settled and that the parties' attorneys were promoting this petulant exchange between the parties. In very strong and unequivocal terms, the court directed that the parties, through their attorneys, come to a financial settlement of the issues then before the court. In doing so, the court did not give adequate account to the respective attorneys' attempts to correct, change and persuade the court that the predicate numbers which the court was using in its figures and calculations were in error.

9. After this discussion, when the parties in Diorio rejected the proposed settlement, respondent observed of the attorneys, in the presence of their clients, that they were being overly litigious and claimed that this was a trait of the attorneys in the County in which they practiced. Respondent's statements disparaged and cast in doubt the positions of the respective attorneys and disparaged the claims of the respective parties.

10. Respondent stated that he would hold a trial in the matter within the next few days, overlooking the fact that a trial date certain had been scheduled for August 5, 1998.

11. When Mrs. Diorio's attorneys objected to the immediate trial date on

the ground that their client would not be available, respondent opined that the client should therefore consider the settlement. Respondent did not call a court reporter into chambers for the purpose of allowing the attorneys to make a record of their objection before the court.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 100.1, 100.2(A), 100.2(C), 100.3(B)(1), 100.3(B)(3) and 100.3(B)(6) of the Rules Governing Judicial Conduct. Charges I through IV of the Formal Written Complaint are sustained insofar as they are consistent with the findings herein, and respondent's misconduct is established.

By his actions in two cases, respondent failed to "respect and comply with the law" and to "be faithful to the law" in violation of the ethical standards (Rules Governing Judicial Conduct, 22 NYCRR 100.2[A] and 100.3[B][1]).

In Smith, it was improper for respondent to find the parties guilty of contempt and sentence them to jail, based on their unsworn statements, without holding a hearing as required by law. It was also improper for respondent to instruct the attorneys to submit affidavits to him concerning the exchange of property without giving a copy to the opposing attorney. Such conduct violates Section 100.3(B)(6) of the Rules, which provides that a judge "shall not initiate, permit, or consider *ex parte* communications."

Respondent's handling of the Robert Marini Builders, Inc. case repeatedly

violated the rights of a third-party defendant, Mr. Loeber, and conveyed an appearance of bias. He granted a default judgment against Mr. Loeber, who was appearing *pro se*, although the litigant was not in fact in default; he ordered Mr. Loeber to sign a corrective deed before the issues had been sufficiently clarified and before any finding had been made as to the defendant's liability; and he held Mr. Loeber in contempt and sentenced him to six months in jail for refusing to sign the deed, without any provision for his release during that period if he purged himself of the contempt. Mr. Loeber remained in jail for 45 days pursuant to respondent's order. Respondent's actions constitute an abuse of his judicial power and suggest that he was biased against the unrepresented litigant.

In two other cases, respondent was injudicious, impatient and discourteous during discussions in which he attempted to achieve a settlement. In Anglin, after pointedly excluding a female attorney from a conference in chambers, respondent used "colorful" language and exerted pressure in an "injudicious and indiscriminate manner" in order to force a settlement. In Diorio, while exerting pressure to achieve a settlement, respondent stated that the parties were wasting the court's time on matters that should have been settled, and he disparaged the attorneys, in the presence of their clients, by asserting that they were being overly litigious and that this was characteristic of Ulster County attorneys. Then, after stating that he would hold a trial within the next few days (notwithstanding that a later date had been scheduled) and being advised that one of the parties would be unavailable, respondent suggested that therefore the client should settle.

While a judge may play an active role in attempting to settle cases, the judge's conduct toward litigants and their attorneys at all times should be "patient, dignified and courteous" (Rules Governing Judicial Conduct, 22 NYCRR 100.3[B][3]).

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

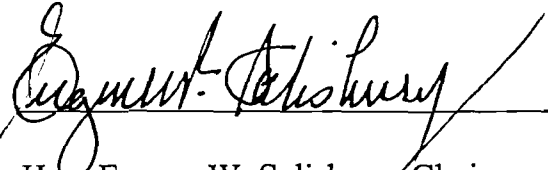
Judge Salisbury, Mr. Berger, Mr. Coffey, Mr. Goldman, Ms. Hernandez, Judge Luciano, Judge Marshall, Judge Peters, Mr. Pope and Judge Ruderman concur.

Ms. Brown was not present.

CERTIFICATION

It is certified that the foregoing is the determination of the State Commission on Judicial Conduct.

Dated: February 8, 2001



Hon. Eugene W. Salisbury, Chair
New York State
Commission on Judicial Conduct