

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

DETERMINATION

RAMONA THWAITS,

a Justice of the Jay Town Court,
Essex County.

THE COMMISSION:

Henry T. Berger, Esq., Chair
Honorable Frances A. Ciardullo
Stephen R. Coffey, Esq.
Lawrence S. Goldman, Esq.
Christina Hernandez, M.S.W.
Honorable Daniel F. Luciano
Mary Holt Moore
Honorable Karen K. Peters
Alan J. Pope, Esq.
Honorable Terry Jane Ruderman

APPEARANCES:

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

Claudia Russell for Respondent

The respondent, Ramona Thwaits, a Justice of the Jay Town Court, Essex County, was served with a Formal Written Complaint dated June 17, 2002, containing three charges. Respondent filed an answer dated July 8, 2002.

On November 4, 2002, 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 November 8, 2002, the Commission approved the agreed statement and made the following determination.

1. Respondent has been a Justice of the Jay Town Court since January 2000. She is not an attorney. Respondent has attended and successfully completed all required training sessions for justices.

2. The Town of Jay has a population of approximately 2,300 people. Respondent is related to many of the town's residents. Until January 2002, respondent had no co-justice in the town to whom she could transfer cases in the event of a conflict.

As to Charge I of the Formal Written Complaint:

3. Abe Lincoln is the brother of respondent's daughter's husband, Bryan Lincoln. John Thwaites is the nephew of respondent's late husband.

4. On or about March 21, 2001, Abe Lincoln appeared before respondent on charges of Criminal Contempt, 1st degree, a felony, and Stalking, 3rd degree, a misdemeanor. Earlier that day, bail had been set at \$10,000 by another judge, who had conducted an immediate arraignment of the defendant and had transferred the

case to respondent's court as the court of original jurisdiction. Over the objection of the assistant district attorney, respondent reduced the bail to \$5,000. The case was later transferred to County Court.

5. In February 2001, due to respondent's unavailability, a judge of another court had conducted an arraignment of Abe Lincoln on a Harassment charge and issued an Order of Protection in favor of John Thwaites, the complaining witness. In or about April 2001, on the *ex parte* request of Bryan Lincoln, respondent's son-in-law, respondent orally modified the Order of Protection, so as to permit Abe Lincoln to attend a wake at the funeral home where John Thwaites was employed. Respondent later disqualified herself from the Harassment case.

6. On or about July 30, 2001, after Abe Lincoln was again charged with felony Criminal Contempt and Stalking his estranged wife, and respondent disqualified herself from presiding over the felony hearing because of her relationship with the defendant and his family, respondent attended the felony hearing at the Elizabethtown Town Court in a small courtroom, where the matter had been transferred, and sat in the courtroom near members of the defendant's family.

7. Respondent asserts that she frequently observed the proceedings in the Elizabethtown Town Court in order to learn, and she asserts further that she did not attend court specifically for the *Lincoln* matter. Respondent now recognizes that her appearance there on that evening conveyed the appearance that she supported the defendant and his family, who also attended for the purpose of showing support for the

defendant.

As to Charge II of the Formal Written Complaint:

8. On or about May 30, 2001, respondent adjourned in contemplation of dismissal a charge of Unsafe Passing against Michael Thwaites, respondent's late husband's nephew by adoption, without notice to or the consent of the prosecution, in violation of Section 170.55(1) of the Criminal Procedure Law, and notwithstanding that the charge had been issued to the defendant following a property damage accident.

9. On or about September 26, 2001, with the consent of the arresting officer, respondent dismissed violations of the local junk ordinance against James Thwaites, the second cousin of respondent's late husband, notwithstanding that the defendant had not fully remedied the violations. Respondent did not disclose to the prosecution her familial relationship with the defendant.

As to Charge III of the Formal Written Complaint:

10. On or about August 7, 2000, respondent conducted an arraignment of Richard Reynolds, a social acquaintance of respondent, on a charge of Criminal Contempt, an alleged violation of an Order of Protection, and granted an adjournment in contemplation of dismissal to the defendant, without notice to or the consent of the prosecution, in violation of Section 170.55(1) of the Criminal Procedure Law.

11. On or about November 26, 2000, after the complaining witness filed a complaint with the police that Mr. Reynolds had again violated an Order of Protection,

respondent, without reading the complaint, refused to issue an arrest warrant for the defendant and told a trooper to instruct the complaining witness, Deborah Reynolds, to come to court so that respondent could explain to her why she had not issued a warrant.

12. On or about December 6, 2000, when Deborah Reynolds came to court, she and respondent spoke *ex parte* concerning Ms. Reynolds' criminal complaint.

13. On or about December 13, 2000, following her meeting with Ms. Reynolds, respondent issued a warrant of arrest for Mr. Reynolds for Criminal Contempt for violating the Order of Protection, and thereafter presided over the matter to disposition, without disclosing to the prosecution respondent's social relationship with the defendant.

14. While the criminal charges against Richard Reynolds were pending before respondent or impending, Mr. Reynolds approached respondent *ex parte* and told respondent of his problems with his wife, Deborah Reynolds, the criminal complainant against him.

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 (B), 100.2(C), 100.3(B)(1), 100.3(B)(6), 100.3(E)(1) and 100.3(E)(1)(d) of the Rules Governing Judicial Conduct. Charges I through III of the Formal Written Complaint are sustained, and respondent's misconduct is established.

A judge's disqualification is required when a party or a material witness to a proceeding is within the sixth degree of relationship to the judge or the judge's spouse or is married to such a relative (Sections 100.3[E][1][d][i] and 100.3[E][1][d][iv] of the Rules Governing Judicial Conduct). As the Court of Appeals has stated:

The handling by a judge of a case to which a family member is a party creates an appearance of impropriety as well as a very obvious potential for abuse, and threatens to undermine the public's confidence in the impartiality of the judiciary. Any involvement by a judge in such cases or any similar suggestion of favoritism to family members has been and will continue to be viewed...as serious misconduct.

Matter of Wait, 67 NY2d 15, 18 (1986)

Disqualification is also required when the judge's impartiality can reasonably be questioned (Section 100.3[E][1] of the Rules). Although most of the individuals in the above-cited matters were not close relatives of respondent (one distant relative was not within the sixth degree of relationship), respondent should not have handled any aspect of a proceeding involving these persons; nor should she have handled the case of this social acquaintance. *See Matter of Robert*, 89 NY2d 745 (1997); *Matter of Going*, 97 NY2d 121 (2001).

We recognize that, in small communities, local justices may frequently be presented with matters in which they have some personal relationship with the parties. Although disqualification may occasion some inconvenience and delay, every judge must be mindful of the importance of adhering to the ethical standards so that public confidence in the impartiality of the judiciary may be preserved.

Respondent's handling of the matters involving her relatives and acquaintance raises further questions as to her impartiality. Respondent's actions not only generally favored her relatives, but were sometimes contrary to law: in two cases, respondent granted an adjournment in contemplation of dismissal without the consent of or notice to the prosecution, as required by statute. In other cases, respondent's actions followed prohibited *ex parte* contacts.

It was also improper for respondent to sit near her relatives in court during a felony hearing for her relative. Her presence, in a small courtroom with other family members who were present to show support for the defendant, could reasonably convey the appearance of lending her judicial prestige to support the defendant and his family.

In mitigation, we note that respondent has conceded that her conduct was improper and that she asserts that she will be more sensitive to her ethical responsibilities, will avoid improper *ex parte* communications, and will disqualify herself or make disclosure in cases involving her relatives and social acquaintances, as required by the Rules.

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

Mr. Berger, Judge Ciardullo, Mr. Goldman, Ms. Hernandez, Judge Luciano, Judge Peters, Mr. Pope and Judge Ruderman concur.

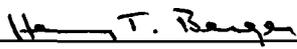
Mr. Coffey dissents and votes to reject the agreed statement of facts on the basis that the disposition is too harsh.

Ms. Moore was not present.

CERTIFICATION

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

Dated: December 30, 2002



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