

**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

J. DOUGLAS TROST,

a Judge of the Family Court,  
Erie County.

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**Determination**

BEFORE: Mrs. Gene Robb, Chairwoman  
Honorable Fritz W. Alexander, II  
David Bromberg  
Honorable Richard J. Cardamone  
Dolores DelBello  
Michael M. Kirsch  
Victor A. Kovner  
William V. Maggipinto  
Honorable Isaac Rubin  
Honorable Felice K. Shea  
Carroll L. Wainwright, Jr.

The respondent, J. Douglas Trost, a judge of the Family Court, Erie County, was served with a Formal Written Complaint dated August 10, 1978, alleging that (i) respondent's conduct was injudicious, intemperate and discourteous in five separate Family Court proceedings between 1974 and 1976, and (ii) respondent signed an order in May 1975, committing an individual to the Erie County Correctional Facility, knowing that the information in the order was false and that the proceeding upon which it was based was fictitious. Respondent filed an answer dated September 15, 1978.

By order dated November 16, 1978, the Commission appointed the Honorable Carman F. Ball as referee to hear and report to the Commission with respect to the issues herein. A hearing was conducted before the referee on December 5, 1978, and December 21, 1978, and the referee's report, dated March 16, 1979, was filed with the Commission.

The administrator of the Commission moved on April 23, 1979, to confirm in part and disaffirm in part the report of the referee, and for a determination that respondent be removed from office. Respondent opposed the administrator's motion and cross-moved to confirm in part and disaffirm in part the report of the referee and to dismiss the Formal Written Complaint.

The Commission heard oral argument by the administrator, respondent and respondent's counsel on June 21, 1979, thereafter considered the record in this proceeding and upon that record makes the findings of fact and conclusions of law set forth below.

Charge I of the Formal Written Complaint is not sustained and therefore is dismissed.

With respect to Charges II through V of the Formal Written Complaint, the Commission finds as follows:

1. On January 31, 1975, in an Erie County Family Court proceeding entitled D\_\_\_\_\_ v. D\_\_\_\_\_,\* respondent was injudicious, intemperate and discourteous, in that he made the following remarks from the bench:

(a) The Court: [Referring to the litigants] As a matter of fact, these two people ought to get shotguns and get them-

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\* In view of the confidential nature of proceedings in Family Court, the names of the parties have been deleted from this determination and record.

selves in a room and kill each other. They are doing it and wasting everybody's time doing it. They are wasting the Court's and everybody's. (Tr. 5).\*

(b) The Court: [Speaking to Mr. D] But let me say this to you, [witness' first name], you know I'm not going to let you off the hook, honest, I am not ... Look, your wife is a pain in the butt to me. All right. But she -- look, you didn't ask me whether you should marry her or not. She was your choice, right? Right.... So you're stuck with her. (Tr. 8).

Mr. D: Ten years ago she threw me out.

The Court: Wait a minute -- you should have bounced out.

(c) The Court: [Referring to amount of support payments] But, Counsel, Let me say this: A reasonable figure that we should talk about here is me putting back to forty-five. [Witness' first name] -- he's just one of those stubborn Italian guys, he is not going to give up. He is not going to give up. (Tr. 9).

Mr. D: I don't have the money to pay it. (Tr. 9).

The Court: Wait a minute, wait a minute. You had plenty of money to pay her. (Tr. 9-10).

Mr. D: I spent it. (Tr. 10).

The Court: Certainly you did. Why the hell didn't you save it? You knew you had an order here, didn't you? You didn't spend it, either. You know as well as I do you've got it tucked away. You know, you don't change your life style overnight, [witness' first name]. You never spent \$4,000.00 in eighteen months in your lifetime -- period.... I should put you in jail for lying, you know what. I should get your brother, put him in jail too for lying. (Tr. 10).

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\* "Tr." refers to the appropriate page in the transcript of the proceeding in Family Court.

(d) The Court: [Referring to Mrs. D] Why don't you divorce this guy and get yourself a man? (Tr. 12).

(e) The Court: And again, you know, [witness' first name] is a pain in the butt to me -- put it on the record -- okay? ... You are a pain in the ass to me, [witness' first name]. That is what you are. (Tr. 13).

2. On November 3, 1975, in an Erie County Family Court support proceeding entitled P \_\_\_\_\_ v. P \_\_\_\_\_, the respondent was injudicious, intemperate and discourteous, in that he made the following remarks from the bench:

(a) The Court: [Speaking to Mrs. P] I'm going to make some allowance for this man today. I'm not going to let it go. You've got two big lummoxes living there, and twenty bucks a week is not enough, no question about it. (Tr. 5-6).

(b) The Court: [Speaking to Mrs. P] Well, some night you ought to hit him on the head with an axe and it will be all over. (Tr. 8).

3. On April 4, 1976, in an Erie County Family Court support proceeding entitled H \_\_\_\_\_ v. H \_\_\_\_\_, respondent was injudicious, intemperate and discourteous, in that he made the following remarks from the bench:

(a) The Court: [Speaking to Mr. H] Well, why don't you do that until you get squared around. Because, [witness' first name], I don't want to bend you out of shape. (Tr. 4).

(b) The Court: [Speaking to Mr. H] The fairness is, you pay according to the Order, now, whether you steal it or whatever you do with it. (Tr. 5).

4. On April 9, 1976, in an Erie County Family Court support proceeding entitled S \_\_\_\_\_ v. J \_\_\_\_\_, respondent was

injudicious, intemperate and discourteous, in that he made the following remarks from the bench:

- (a) The Court: [Speaking to counsel for petitioner]  
Why don't you give each of them a gun?
- [Counsel]: Each had a gun.
- The Court: Let them use it. (Tr. 5).
- (b) The Court: [Speaking to Mr. J] Don't you understand something? You're still fighting; why the hell don't you give up? Don't you know when you're beat? ... You're a man, aren't you? ... Why don't you just lie back and forget about it, instead of pushing. Come on -- I'm giving you good advice ... Not that I agree with the law -- don't get me wrong. (Tr. 9-10).

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 33.1 and 33.3(a)(3) of the Rules Governing Judicial Conduct and Canons 1 and 3A(3) of the Code of Judicial Conduct. Charges II through V of the Formal Written Complaint are sustained and respondent is thereby guilty of misconduct.

With respect to Charge VI of the Formal Written Complaint, the Commission finds as follows:

5. In May 1975, Raymond C. Hill, a reporter for the Buffalo Evening News, was preparing a series of news articles on the effectiveness of sentencing convicted defendants to serve their jail terms on weekends only. Without respondent's knowledge, Mr. Hill requested permission of the administrative judge of the eighth judicial district to do a weekend term in the Erie County Correctional Facility, and was refused. Mr. Hill then sought respondent's assistance. Mr. Hill and respondent are friends.

6. Respondent introduced Mr. Hill to Frank Festa, superintendent of the Erie County Correctional Facility. Respondent thereafter had an order prepared, committing Mr. Hill to the correctional facility so that Mr. Hill might pursue his news story without it being disclosed to the inmates that he was a reporter. Respondent signed the order in his capacity as a judge of the Family Court and caused the court's seal to be affixed thereto, with knowledge that there had been no legal proceedings upon which to base the order and that the information thereon was false. Such order was signed without authority in law or basis in fact.

7. On May 16, 1975, Mr. Hill surrendered himself at the Erie County Correctional Facility. The commitment order signed by respondent was entered as a public record; Mr. Hill was fingerprinted and committed to the facility, and he thereby received a criminal history record.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 33.1 and 33.2(a), (b) and (c) of the Rules Governing Judicial Conduct, and Canons 1, 2A and 2B of the Code of Judicial Conduct. Charge VI of the Formal Written Complaint is sustained and respondent is thereby guilty of misconduct.

It is improper for a judge to speak to litigants in the injudicious, intemperate and discourteous manner respondent did in the cases cited in paragraphs 1 through 4 above. Section 33.3(a)(3) of the Rules Governing Judicial Conduct requires a judge to be "patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, and others with whom he deals in his official capacity...."

There is no justification for a judge to tell the people before him, as respondent did, to "get shotguns ... and kill each other," or to call someone "a pain in the ass" in open court, or to advise one party "to hit [the other party] over the head with an axe." Such conduct demeans the judiciary and diminishes public confidence in the integrity of the legal system. It aggravates heightened emotions and issues in a judicial forum where emotions should be tempered and issues resolved.

"Breaches of judicial temperament are of the utmost gravity," as noted by the Appellate Division, "[and] impair the public's image of the dignity and impartiality of courts, which is essential to ... the court's role in society." Matter of Mertens, 56 A.D.2d 456 (1st Dept. 1977).

The Commission rejects respondent's explanation that it is "effective at times [for a judge] to meet people at their own level and to use language and convey ideas that they would not understand if presented in any other fashion" (Hr. 27).<sup>\*</sup> Although respondent describes the setting of his court as "informal" (Hr.28), his conduct fails to comport with reasonable standards of decorum and taste, appropriate even to an informal setting. He appears to have used the informality of his court to justify the denigration of those who appear in that court.

With respect to his signing of the false commitment order without authorization in law, so that a friend could write a news story, respondent violated those standards of conduct which require a judge to "respect and comply with the law" and which prohibit a

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<sup>\*</sup> "Hr." refers to the appropriate page in the transcript of the hearing before the referee.

judge from "allow[ing] his family, social, or other relationships to influence his judicial conduct or judgment" (Sections 33.2[a] and [b] of the Rules Governing Judicial Conduct). Regardless of the ultimate purpose, judicial office should not be used to advance a private interest (Section 33.2[c] of the Rules).

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

Judge Alexander and Mr. Bromberg dissent with respect to Charge I and vote to sustain the charge.

Mr. Kirsch dissents with respect to Charge II and votes to dismiss the charge.

Mr. Wainwright abstains with respect to Charge II.

Mr. Kirsch and Mr. Wainwright dissent with respect to Charges III, IV and V and vote to dismiss the charges.

Mrs. Robb and Mr. Kovner dissent with respect to Charge VI and vote to dismiss the charge.

#### CERTIFICATION

By signature below, it is certified that this determination of the Commission constitutes the findings of fact and conclusions of law required by Section 44, subdivision 7, of the Judiciary Law.

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

Dated: August 13, 1979  
Albany, New York

APPEARANCES:

Boreanaz, NeMoyer & Baker (By Harold J. Boreanaz) for Respondent  
Gerald Stern for the Commission (Lester Goodchild, John W. Dorn,  
Of Counsel)