

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

PASQUALE F. VALENTINO,

a Justice of the Stanford Town Court,
Dutchess 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 (Vickie Ma, Of Counsel) for the Commission

Sall, Caltagirone & Coleman (by Paul Caltagirone) for Respondent

The respondent, Pasquale F. Valentino, a Justice of the Stanford Town Court, Dutchess County, was served with a Formal Written Complaint dated October 1, 2002, containing three charges. Respondent filed an answer dated October 10, 2002.

On January 6, 2003, the Administrator of the Commission, respondent's counsel and respondent entered into an Agreed Statement of Facts, agreeing that the Commission make its determination based upon the referee's findings of fact and conclusions of law, jointly recommending that respondent be admonished and waiving further submissions and oral argument.

On January 30, 2003, the Commission approved the Agreed Statement of Facts and made the following determination.

1. Respondent is a Justice of the Stanford Town Court, Dutchess County, who began serving a second four-year term that commenced in January 2002 and expires in December 2005. He is not an attorney.

As to Charge I of the Formal Written Complaint:

2. Respondent has known Charles Zammiello, who is paid to remove snow and perform other odd jobs for respondent, since 1999.

3. On September 27, 2000, respondent presided over a probable cause and suppression hearing in *People v. Charles Zammiello*, a Driving While Intoxicated ("DWI") case. Respondent did not disclose his relationship with the defendant to the attorneys.

4. Respondent failed to obtain a remittal of disqualification, in that he neither disclosed on the record any basis for his disqualification nor incorporated into the record an agreement by the attorneys that respondent could participate in the hearing.

There is no evidence that respondent's ruling was influenced by his relationship with Mr. Zammiello.

5. Respondent recused himself from the case in June 2001, and the matter was transferred to another judge.

As to Charge II of the Formal Written Complaint:

6. In 2000, while the *Zammiello* matter was pending before respondent, he engaged in an *ex parte* conversation with George Hazel, a DWI prosecutor who was not assigned to the *Zammiello* case. Respondent asked Mr. Hazel to review the *Zammiello* file and offer respondent his opinion as to the lawfulness of the arrest. Mr. Hazel advised respondent that the arrest was lawful.

7. Respondent did not disclose his conversation with Mr. Hazel to the assigned assistant district attorney, Angela LoPane, or to the defense attorney.

As to Charge III of the Formal Written Complaint:

8. The charge is not sustained and is, therefore, dismissed.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 100.1, 100.2, 100.3(B)(6) and 100.3(E) of the Rules Governing Judicial Conduct. Charges I and II of the Formal Written Complaint are sustained, and respondent's misconduct is established. Charge III is not sustained and is, therefore, dismissed.

A judge's disqualification is required in any proceeding in which the judge's impartiality might reasonably be questioned (Rules Governing Judicial Conduct §100.3[E][1]). It was improper for respondent to preside over any aspect of a proceeding involving an individual whom the judge had paid to perform odd jobs. *See Matter of Ross*, 1990 Ann Rep 153 (Comm'n on Jud Conduct, Sept 29, 1989) (judge failed to disqualify himself in matters involving his business clients, his tenant, his personal attorney and his relatives); *Matter of Barker*, 1999 Ann Rep 77 (Comm'n on Jud Conduct, March 17, 1998) (judge failed to disqualify himself in a small claims case involving a party who had recently done work for the judge similar to that at issue in the case). Handling such a case creates an appearance of impropriety, which is prohibited by Section 100.2 of the Rules. Notwithstanding that there is no evidence that respondent's ruling was influenced by his personal relationship with the defendant, respondent's conduct was improper.

Respondent also engaged in misconduct by seeking *ex parte* advice from a prosecutor as to lawfulness of the defendant's arrest. While a judge may seek advice on a pending matter from a "disinterested expert on the law" (Rules §100.3[B][6][b]), a prosecutor whose office was prosecuting the case cannot be considered impartial. The ethical rules also impose strict safeguards in such instances, including notice to the parties and an opportunity to respond (*Id.*). Respondent's consultation with the prosecutor was an unauthorized *ex parte* communication, which is prohibited by the ethical standards (Rules §100.3[B][6]).

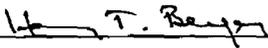
By reason of the foregoing, the Commission determines that the appropriate sanction is admonition.

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

CERTIFICATION

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

Dated: February 3, 2003



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