

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

KEVIN G. YOUNG,

DETERMINATION

a Judge of the Syracuse City Court, Onondaga
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 (John J. Postel, Of Counsel) for the Commission

Emil M. Rossi for Respondent

The respondent, Kevin G. Young, a judge of the Syracuse City Court,
Onondaga County, was served with a Formal Written Complaint dated May 12, 2000,
alleging that respondent, at the request of a friend who was the petitioner in a pending

Family Court matter, initiated an improper *ex parte* communication with the Family Court hearing examiner assigned to the matter. Respondent filed an answer dated June 12, 2000.

On October 19, 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 October 23, 2000, the Commission approved the agreed statement and made the following determination.

1. Respondent has been a judge of the Syracuse City Court since January 1, 1996.

2. Respondent has known Kathleen O'Hara for many years. Ms. O'Hara is a personal friend of respondent's and had been his client when he was in private practice prior to January 1, 1996.

3. In or about July 1998, Ms. O'Hara advised respondent that she had a matter pending in Family Court involving Patsy J. Campolieta, her ex-husband. Ms. O'Hara advised respondent that the matter was before Onondaga County Family Court Hearing Examiner Robert Jenkins and asked respondent if he would "make a call" to

Hearing Examiner Jenkins concerning the issue of education-related expenses involving one of Ms. O'Hara's children from her prior marriage to Mr. Campolieta.

4. Respondent initially rejected Ms. O'Hara's request but subsequently contacted Hearing Examiner Jenkins, who was presiding over Kathleen O'Hara v. Patsy J. Campolieta, and left a message that the Hearing Examiner contact "Judge Young."

5. Respondent initially advised Ms. O'Hara that he would not contact Hearing Examiner Jenkins because he recognized that a judge should not contact another judicial officer concerning a pending matter at the request of a personal friend.

6. When Hearing Examiner Jenkins returned respondent's call, respondent advised him that Mr. Campolieta was a "hard ass" and was being "unreasonable" by not contributing to the college expenses of one of the children of the parties. Hearing Examiner Jenkins was aware that respondent was a Syracuse City Court judge, and he recused himself from the matter as a consequence of respondent's *ex parte* communication.

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) and 100.3(B)(6) of the Rules Governing Judicial Conduct. Charge I of the Formal Written Complaint is sustained, and respondent's misconduct is established.

By contacting a Family Court Hearing Examiner on behalf of a friend whose case was pending before the Hearing Examiner, respondent intervened on behalf of another in a pending proceeding and used the prestige of judicial office in an attempt to advance his friend's private interests. Such assertion of influence is clearly prohibited by the ethical standards (Section 100.2[C] of the Rules Governing Judicial Conduct). As the Court of Appeals stated in Matter of Lonschein (50 NY2d 569, 571-72):

No judge should ever allow personal relationships to color his conduct or lend the prestige of his office to advance the private interests of others. Members of the judiciary should be acutely aware that any action they take, whether or on off the bench, must be measured against exacting standards of scrutiny to the end that public perception of the integrity of the judiciary will be preserved.

Difficult as it may be to refuse the request of a close friend or relative to "make a call" on his or her behalf, every judge must be mindful of the importance of adhering to the ethical standards so that public confidence in the integrity and impartiality of the judiciary may be preserved. Respondent had ample opportunity to reflect upon the impropriety of the call he was requested to make. Indeed, when his friend asked that he "make a call" on her behalf, he initially declined to do so because he recognized the impropriety of such conduct. Then, when he made the call to the Hearing Examiner, he left word that "Judge Young" had called. Not until the Hearing Examiner returned the call did respondent deliver an emphatic message on behalf of his friend.

Having identified himself as a judge, respondent, who had been his friend's attorney before becoming a judge, acted as her advocate. He described his friend's former husband in derogatory language and advised the Hearing Examiner that the former husband was being "unreasonable." Clearly, the purpose of such *ex parte* advocacy was to influence the Hearing Examiner on his friend's behalf. Indeed, the Hearing Examiner felt constrained to recuse himself from the matter as a consequence of respondent's improper intervention. Such a solicitation of special consideration "is wrong, and always has been wrong," and undermines the administration of justice. Matter of Byrne, 420 NYS2d 70, 71 (Ct on the Jud 1979); *see also* Matter of McGee, 1985 Ann Report of NY Comm on Jud Conduct, at 176; Matter of DeLuca, 1985 Ann Report of NY Comm on Jud Conduct, at 119.

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

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

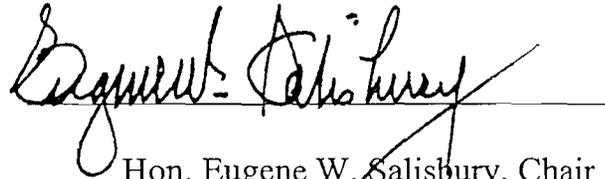
Ms. Brown and Mr. Coffey and were not present.

CERTIFICATION

It is certified that the foregoing is the determination of the State

Commission on Judicial Conduct.

Dated: December 29, 2000

A handwritten signature in cursive script, reading "Eugene W. Salisbury", is written over a horizontal line.

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