

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

EDWYN C. HISE,

a Justice of the Alexander Town Court,
Genesee County.

THE COMMISSION:

Henry T. Berger, Esq., Chair
Honorable Frederick M. Marshall, Vice 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 (John J. Postel, Of Counsel) for the Commission

Michael M. Mohun for Respondent

The respondent, Edwyn C. Hise, a justice of the Alexander Town Court,
Genesee County, was served with a Formal Written Complaint dated November 14, 2001,

containing one charge. Respondent filed an answer dated November 27, 2001.

On February 28, 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 admonished and waiving further submissions and oral argument.

On May 9, 2002, the Commission approved the agreed statement and made the following determination.

1. Respondent has been a justice of the Alexander Town Court since January 1, 1999. He has attended and successfully completed all required training sessions for judges.

2. On or about June 27, 2000, respondent presided over People v. Denny Rhodes, in which the defendant, who had been issued an appearance ticket dated May 20, 2000, was charged with Accumulating Junk on Property in Excess of Thirty Days, a violation of Section 405(C) of the Alexander Town Code.

3. Respondent advised the defendant of the charge against him and of his right to an attorney. The defendant indicated that he wished to proceed without an attorney and pleaded not guilty to the charge. After pleading not guilty, the defendant acknowledged that his property needed to be cleaned up.

4. Following his discussion with the Zoning Enforcement Officer, the defendant advised respondent of what actions he would take to clean up his property. Respondent scheduled the defendant to return to court to discuss his actions in cleaning up the property.

5. On or about September 16, 2000, respondent received a letter from the Zoning Enforcement Officer indicating that the defendant had not yet cleaned up the property. The defendant was issued a notice to appear in court.

6. On or about October 17, 2000, the defendant appeared before respondent without counsel. Respondent advised the defendant that the Zoning Enforcement Officer had advised the court by letter that the defendant had not cleaned up his property. The defendant acknowledged that he had not cleaned up his property.

7. Respondent convicted the defendant of the original violation notwithstanding that the defendant had pleaded not guilty, had not changed his plea to guilty and had not been provided with a trial in the matter.

8. Respondent fined the defendant \$350.00 and sentenced him to ten days in jail.

9. Respondent convicted the defendant, fined him \$350.00 and sentenced him to jail because he believed that the defendant's statements during the arraignment about agreeing to "clean up" his property and bring it in conformance with Town Code regulations constituted an implied admission of guilt.

10. Respondent acknowledges that it was improper to find the defendant guilty on his acknowledgment that he had not cleaned up his property without either a trial or a formal guilty plea, especially since (a) the defendant was unrepresented by counsel and (b) respondent intended to sentence the defendant to a fine and a ten-day jail sentence. Respondent recognizes that a defendant has a right to a trial in the absence of a formal plea of guilty, and has stipulated that he will be careful not to engage in such conduct again.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 100.1, 100.2(A), 100.3(B)(1) 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.

Respondent violated fundamental statutory procedures in convicting and imposing a ten-day jail sentence on an unrepresented defendant. After the defendant had pleaded not guilty to the charge, respondent convicted him without a trial, relying on the defendant's incriminating statements at the arraignment. The defendant had never changed his plea to guilty and never waived his guaranteed right to a trial.

It is the responsibility of every judge, lawyer or non-lawyer, to maintain professional competence in the law and to ensure that every defendant, especially a defendant who is facing the loss of liberty, is afforded basic procedural due process. *See*

Matter of Christie, 2002 Ann Rep of NY Commn on Jud Conduct __; Sections 100.2(A) and 100.3(B)(1) of the Rules Governing Judicial Conduct. A judge who convicts a defendant without a trial or a knowing, voluntary guilty plea does not comply with the law and denies the defendant the opportunity to be fully heard. Matter of McGee v. State Commn on Jud Conduct, 59 NY2d 870, 871 (1983); Matter of Schneider, 1991 Ann Rep of NY Commn on Jud Conduct 71; Section 100.3(B)(6) of the Rules.

Respondent's misconduct shows basic ignorance of fundamental legal principles and warrants public discipline. See Matter of Maxon, 1986 Ann Rep of NY Commn on Jud Conduct 143, in which a non-lawyer town justice was admonished for convicting and fining a defendant in a traffic case without a trial. Here, where the defendant was sentenced to a ten-day term in jail, the effect of respondent's abrogation of the defendant's rights was particularly harmful. In mitigation, the conduct of respondent, a non-lawyer who had served less than two years as a judge, is limited to a single instance and respondent has vowed not to engage in such conduct again.

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

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

Judge Marshall was not present.

CERTIFICATION

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

Dated: May 17, 2002



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