

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

DAVID W. HOAG,

a Justice of the Hardenburgh Town
Court, Ulster County.

Determination

THE COMMISSION:

Henry T. Berger, Esq., Chair
Helaine M. Barnett, Esq.
E. Garrett Cleary, Esq.
Stephen R. Coffey, Esq.
Mary Ann Crotty
Lawrence S. Goldman, Esq.
Honorable Daniel F. Luciano
Honorable Juanita Bing Newton
Honorable Eugene W. Salisbury
Barry C. Sample
Honorable William C. Thompson

APPEARANCES:

Gerald Stern for the Commission

Howard C. St. John and Associates (John J. Cook, Of
Counsel) for Respondent

The respondent, David W. Hoag, a justice of the Hardenburgh Town Court, Ulster County, was served with a Formal Written Complaint dated September 6, 1995, alleging that he engaged in private employment in which he was responsible for filing charges in his own court. Respondent filed an answer dated October 12, 1995.

On December 26, 1995, the administrator of the Commission, respondent and respondent's counsel entered into an

agreed statement of facts pursuant to Judiciary Law §44(5), waiving the hearing provided in Judiciary Law §44(4), stipulating that the Commission make its determination based on the agreed upon facts, jointly recommending that respondent be admonished and waiving further submissions and oral argument.

On January 11, 1996, the Commission approved the agreed statement and made the following determination.

1. Respondent has been a justice of the Hardenburgh Town Court since 1992.

2. Respondent, a part-time judge, has been employed for many years as superintendent of the Balsam Lake Club, a private club in the Town of Hardenburgh. Among respondent's duties is patrolling the club's property and apprehending trespassers.

3. Between 1992 and 1995, respondent signed as complaining witness and filed with the other judge of his court 30 informations against individuals that respondent had apprehended on the club's property, as set forth in Schedule A appended hereto. Three of the defendants, Frank P. DelDeo, Thomas Pendred and Edmund S. Yankov, were detained by respondent on club property before the charges were filed.

4. In letters dated July 25, 1992, November 8, 1993, September 27, 1994, and March 11, 1995, to his fellow judge, Vincent W. Prior, and in letters dated December 27, 1994, and January 17, 1995, to District Attorney Michael Kavanagh in

connection with the cases, respondent used his judicial stationery.

5. Respondent has promised to refrain from apprehending trespassers and from acting as complaining witness in cases in his court.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated the Rules Governing Judicial Conduct then in effect, 22 NYCRR 100.1, 100.2(a) and 100.5(h)*, and Canons 1 and 2A of the Code of Judicial Conduct. Charge I of the Formal Written Complaint is sustained insofar as it is consistent with the findings herein, and respondent's misconduct is established.

"A part-time judge may accept private employment...provided that such employment is not incompatible with judicial office and does not conflict or interfere with the proper performance of the judge's duties." (Rules Governing Judicial Conduct then in effect, 22 NYCRR 100.5[h]*). As superintendent of a private club in the town in which he sits, respondent apprehended and charged trespassers on the club's property. This was incompatible with his role as a judge and conflicted with his judicial duties.

Respondent's enforcement duties compromised his impartiality in other cases. "A judge cannot be considered

*Now Section 100.6(B)(4)

neutral and detached if he or she acts as a police officer." (Matter of Rones, 1995 Ann Report of NY Commn on Jud Conduct, at 126, 128). He placed himself in a position in which he was a witness in his own court and, thus, could not preside over these cases. (See, Rules Governing Judicial Conduct then in effect, 22 NYCRR 100.3[c][1][i]¹; Matter of Ross, 1990 Ann Report of NY Commn on Jud Conduct, at 153, 156). It would also be imprudent for the only other judge of the court to hear them since his "impartiality might reasonably be questioned" in view of his relationship to respondent, and his disqualification would also be required. (See, 22 NYCRR 100.3[c][1]²; see also, Matter of Harris v State Commission on Judicial Conduct, 56 NY2d 365, 367). Consequently, a significant number of cases for a town court--30 in three years--would have to be transferred to another jurisdiction for disposition, an unnecessary burden on the administration of justice.

It was also wrong for respondent to use judicial stationery in connection with these private disputes. (See, Matter of Tyler v State Commission on Judicial Conduct, 75 NY2d 525, 527).

The Commission has taken into account that respondent has vowed to avoid this conduct in the future.

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

¹Now Section 100.3(E)(1)(a)(ii)

²Now Section 100.3(E)(1)

Mr. Berger, Ms. Barnett, Mr. Cleary, Mr. Coffey, Ms. Crotty, Mr. Goldman, Judge Newton, Judge Salisbury and Judge Thompson concur.

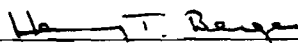
Mr. Sample was not present.

Judge Luciano was not a member of the Commission when the vote was taken in this matter.

CERTIFICATION

It is certified that the foregoing is the determination of the State Commission on Judicial Conduct, containing the findings of fact and conclusions of law required by Section 44, subdivision 7, of the Judiciary Law.

Dated: (March 20, 1996)


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

Schedule A

<u>Defendant</u>	<u>Charge</u>	<u>Date Of Offense</u>
Roger Bates	Trespass	8/19/94
Patrick Connelly	Trespass	6/13/92
Patty Connelly	Trespass	6/13/92
Alfred Dauria	Trespass	8/21/94
Frank P. DelDeo	Trespass	5/9/93
Robert Dembeck	Trespass	5/4/94
Robert Dembeck	Trespass	8/9/94
Robert C. Graham	Trespass	7/3/94
Harry Hook	Trespass	9/14/94
Daniel Ilaroi	Trespass	7/16/94
Paul Kelly	Trespass	5/21/94
Robert J. Kompo	Trespass	7/26/93
Daniel B. Larson	Trespass	1/7/95
Joseph Lasek	Trespass; Fishing Without A License; Failure To Carry A Fishing License	9/27/92
Bruce G. LaTorre	Trespass	7/24/93
Justin P. Minch	Trespass; Fishing Without A License	5/22/93
James Miros	Trespass	6/13/92
Christopher Nicholls	Trespass	5/8/93
Kenneth A. Paro	Trespass	5/22/93
Thomas Pendred	Trespass	7/6/93
Robert J. Riese	Trespass	7/26/93

Schedule A (cont.)

<u>Defendant</u>	<u>Charge</u>	<u>Date Of Offense</u>
Joseph A. Rispoli	Trespass	9/4/94
Fred Rodgers	Trespass	7/24/93
Michael J. Snyder	Trespass	6/27/93
Lino Sommovigo	Trespass; Fishing Without A License; Failure To Carry A Fishing License	9/27/92
Christoph C. Squazzo	Trespass	9/4/94
David Ullman	Trespass	6/13/92
Donald Ullman	Trespass	6/13/92
Todd M. Williams	Trespass	1/7/95
Edmund S. Yankov	Trespass	5/9/93