

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

JOHN F. MAHON,

a Justice of the Mohawk Town Court,
Montgomery County.

Determination

THE COMMISSION:

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

APPEARANCES:

Gerald Stern (Cathleen S. Cenci, Of Counsel) for the
Commission

Honorable John F. Mahon, pro se

The respondent, John F. Mahon, a justice of the Mohawk
Town Court, Montgomery County, was served with a Formal Written
Complaint dated May 9, 1995, alleging improper demeanor.

Respondent answered the complaint by letter dated June 12, 1995.

By order dated July 20, 1995, the Commission designated
John T. O'Friel, Esq., as referee to hear and report proposed
findings of fact and conclusions of law. A hearing was held on

September 14, 1995, and the referee filed his report with the Commission on March 19, 1996.

By motion dated April 23, 1996, the administrator of the Commission moved to confirm the referee's report and for a finding that respondent be censured. Respondent did not file any papers in response thereto and did not request oral argument.

On June 6, 1996, the Commission considered the record of the proceeding and made the following findings of fact.

1. Respondent has been a justice of the Mohawk Town Court since June 1988.

2. On February 13, 1995, Eileen Dumar went to the Mohawk Town Court to pay a fine for her son, Chad, who had previously pleaded guilty by mail to Failure To Affix Registration Sticker and Expired Inspection. Respondent had imposed a fine with instructions that it could be paid by mail.

3. Respondent was acquainted with the Dumar family.

4. Respondent asked Ms. Dumar why she had come to court; she replied that she intended to pay her son's fine. Respondent said that he did not want "mom or dad" to pay the fine.

5. Without provocation, respondent loudly and angrily called Ms. Dumar a "god-damn, interfering, middle-aged bitch" and her son a "stupid shit."

6. The remarks were overheard by Ronald Hinkle, who was elsewhere in the building on town business. Mr. Hinkle was

concerned that Ms. Dumar was so upset and shaken by the incident that she could not drive safely.

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 100.3(a)(3)*, and Canons 1, 2A and 3A(3) of the Code of Judicial Conduct. Charge I of the Formal Written Complaint is sustained, and respondent's misconduct is established.

A judge must be "patient, dignified and courteous to litigants, jurors, witnesses, lawyers and others with whom the judge deals in an official capacity...." (Rules Governing Judicial Conduct, 22 NYCRR 100.3[B][3]). Respondent violated this standard by the unprovoked and unjustified vulgarities and vitriol to which he subjected Ms. Dumar, who had merely come to court to pay a fine.

Even off the bench, angry and profane language by a judge is inappropriate. (See, Matter of Cerbone v State Commission on Judicial Conduct, 61 NY2d 93, 95; Matter of Kuehnel v State Commission on Judicial Conduct, 49 NY2d 465, 468; Matter of Gloss, 1994 Ann Report of NY Commn on Jud Conduct, at 67, 69). In connection with official duties, it is especially serious.

*Now Section 100.3(B)(3)

(See, Matter of Aldrich v State Commission on Judicial Conduct,
58 NY2d 279, 281-82).

Self-evidently, breaches of judicial
temperament are of the utmost gravity.

As a matter of humanity and democratic
government, the seriousness of a Judge, in
his position of power and authority, being
rude and abusive to persons under his
authority--litigants, witnesses, lawyers--
needs no elaboration.

It impairs the public's image of the
dignity and impartiality of courts, which is
essential to their fulfilling the court's
role in society.

Matter of Mertens, 56 AD2d
456, 470 (1st Dept)

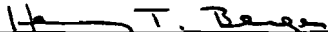
By reason of the foregoing, the Commission determines
that the appropriate sanction is censure.

All concur.

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: August 8, 1996


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