

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

JAMES R. NICHOLS, SR.,

a Justice of the Malta Town Court, Saratoga
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
Honorable Karen K. Peters
Alan J. Pope, Esq.
Honorable Terry Jane Ruderman

APPEARANCES:

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

Riebel Law Firm (by David L. Riebel) for Respondent

The respondent, James R. Nichols, Sr., a justice of the Malta Town Court,
Saratoga County, was served with a Formal Written Complaint dated June 8, 2001,
containing one charge. Respondent filed an answer dated July 2, 2001.

On July 30, 2001, 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 November 8, 2001, the Commission approved the agreed statement and made the following determination.

1. Respondent has been a justice of the Malta Town Court since 1983. He is not an attorney. He has attended and successfully completed all required training sessions for justices.
2. On or about January 11, 2001, after a bench trial, respondent found the defendant in People v. Ford C. Keefe guilty of Consuming Alcohol In A Motor Vehicle under Section 1227.1 of the Vehicle and Traffic Law and sentenced Mr. Keefe to a \$100 fine or a 15-day jail sentence.
3. When Mr. Keefe informed respondent that he had \$41 with him which he could apply toward the fine and requested additional time to pay the remainder of the fine money, respondent refused to allow him additional time to pay and committed him to jail for 15 days or until the fine was paid, notwithstanding that respondent allows defendants who plead guilty by mail to pay their fines within three weeks.

4. Respondent failed to advise Mr. Keefe that he had a right to apply to be resentenced, as required by Section 420.10(3) of the Criminal Procedure Law. The defendant was detained at the jail for approximately two and a half hours until he obtained funds to pay the fine.

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.

By committing a defendant to jail after the defendant stated that he was unable to pay a \$100 fine for a traffic infraction and failing to advise the defendant of his right to be resentenced, respondent failed to "be faithful to the law" and failed to provide the defendant with a full opportunity to be heard according to law, as required by Sections 100.3(B)(1) and 100.3(B)(6) of the Rules Governing Judicial Conduct. The Criminal Procedure Law provides that when a defendant can be imprisoned for failure to pay a fine, the judge must advise the defendant of the right to apply for resentencing and that, after resentencing, if the defendant is unable to pay the fine, the court must either adjust the terms of payment or lower the amount of the fine or revoke the sentence (§420.10[3], [5]). As a result of respondent's failure to comply with statutory procedures, the defendant was summarily incarcerated for a simple traffic infraction merely because he

could not immediately pay a \$100 fine.

Respondent's treatment of the defendant was especially indefensible since if the defendant had pleaded guilty by mail, he would have been given three weeks to pay the fine. It was patently unfair and discriminatory for respondent to incarcerate a defendant convicted after trial because he could not pay the fine immediately, rather than to provide for the reasonable time for payment given to mail pleas for a similar offense. *See Matter of Muskopf*, 2000 Ann Report of NY Commn on Jud Conduct 133. If the defendant failed to pay the fine within the provided time, respondent could have initiated suspension of the defendant's driver's license.

A judge is obliged by the Rules Governing Judicial Conduct to be competent in the law and to apply the law in a fair and impartial manner. Sections 100.2(A) and 100.3(B)(1) of the Rules; *Matter of Curcio*, 1984 Ann Report of NY Commn on Jud Conduct 80; *Matter of Muskopf*, *supra*. As a judge since 1983, respondent should be familiar with statutory procedures.

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

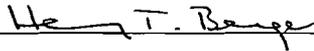
Mr. Berger, Judge Marshall, Judge Ciardullo, Mr. Coffey, Mr. Goldman, Ms. Hernandez, Judge Peters, Mr. Pope and Judge Ruderman concur.

Judge Luciano was not present.

CERTIFICATION

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

Dated: November 19, 2001



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