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

STEPHEN POLI,

a Justice of the Camillus Town Court, Onondaga County.*

THE COMMISSION:

Henry T. Berger, Esq., Chair
Helaine M. Barnett, Esq.
Honorable Evelyn L. Braun
E. Garrett Cleary, Esq.
Lawrence S. Goldman, Esq.
Honorable Juanita Bing Newton
Honorable Eugene W. Salisbury
John J. Sheehy, Esq.
Honorable William C. Thompson

APPEARANCES:

Gerald Stern for the Commission

Primo & Centra (By John V. Centra) for Respondent

The respondent, Stephen Poli, a justice of the Camillus Town Court, Onondaga County, was served with a Formal Written Complaint dated April 27, 1994, alleging that he arraigned his son on a criminal charge. Respondent filed an answer dated May 20, 1994.

*The Formal Written Complaint was filed, bearing the caption "Stephen Poli, an Acting Justice of the Camillus Town Court, Onondaga County." It is hereby amended to reflect respondent's correct title.

On July 5, 1994, 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 by Judiciary Law §44(4), stipulating that the Commission make its determination based on the pleadings and the agreed upon facts, jointly recommending that respondent be censured and waiving further submissions and oral argument.

On July 21, 1994, the Commission accepted the agreed statement and made the following determination.

1. Respondent has been a justice of the Camillus Town Court since July 1993.

2. On September 11, 1993, respondent's 25-year-old son, Scott A. Poli, was arrested on a charge of Assault, Third Degree.

3. Respondent was notified of the arrest by a friend of his son and went to the Town of Camillus police station between 4:30 and 5:00 A.M. on the day of the arrest.

4. Respondent was never asked by the police to arraign his son. Police Officer J. B. Whelan told respondent that he intended to contact another judge to conduct the arraignment.

5. Respondent told Officer Whelan that he would conduct the arraignment. He then had a private discussion with his son outside the presence of the police, arraigned his son and released him on his own recognizance.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Judiciary Law §14; the Rules Governing Judicial Conduct, 22 NYCRR 100.1, 100.2(a), 100.3(a)(1), 100.3(c)(1)(i) and 100.3(c)(1)(iv), and Canons 1, 2A, 3A(1), 3C(1)(a) and 3C(1)(d) of the Code of Judicial Conduct. Charge I of the Formal Written Complaint is sustained, and respondent's misconduct is established.

A judge is not permitted to take any part in cases involving members of his family within the sixth degree of relationship. (Judiciary Law §14; Rules Governing Judicial Conduct, 22 NYCRR 100.3[c][1][iv]). Handling any aspect of a proceeding of a close relative, including an arraignment, is wrong (Matter of Pulver, 1983 Ann Report of NY Commn on Jud Conduct, at 157, 158), as is arraigning defendants against whom the judge's son is a material witness (Matter of Winegard, 1992 Ann Report of NY Commn on Jud Conduct, at 70, 76; Matter of Straite, 1988 Ann Report of NY Commn on Jud Conduct, at 226, 227-28).

"The handling by a judge of a case to which a family member is a party creates an appearance of impropriety as well as a very obvious potential for abuse, and threatens to undermine the public's confidence in the impartiality of the judiciary. Any involvement by a judge in such cases or any similar

suggestion of favoritism to family members has been and will continue to be viewed by this court as serious misconduct." (Matter of Wait v State Commission on Judicial Conduct, 67 NY2d 15, 18).

Respondent reached out to get the case before him and gave his son the most favorable outcome possible at arraignment: release on his own recognizance. While an independent magistrate might have reached the same result on the merits, reasonable suspicion of favoritism is created when the judge is the defendant's father.

Had respondent disposed of the charge against his son, shown provable favoritism, attempted to conceal his involvement or repeatedly handled his relatives' cases, removal would be the appropriate sanction. (See, Wait, supra; Matter of Deyo, 1981 Ann Report of NY Commn on Jud Conduct, at 113; Matter of Schultz, 1980 Ann Report of NY Commn on Jud Conduct, at 113; Matter of Hayes, 43 AD2d 872 [3d Dept]). We have taken into account that respondent's judgment in this case may have been clouded by his son's involvement. (See, Matter of Edwards v State Commission on Judicial Conduct, 67 NY2d 153, 155; Matter of Figueroa, 1980 Ann Report of NY Commn on Jud Conduct, at 159, 161).

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

Mr. Berger, Ms. Barnett, Judge Braun, Mr. Cleary, Mr. Goldman, Judge Newton, Judge Salisbury and Mr. Sheehy concur. Judge Thompson was not present.

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: October 7, 1994

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