

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

DONALD G. PURPLE, JR.,

a Judge of the Family Court and County Court,
Steuben County.

Determination

THE COMMISSION:

Henry T. Berger, Esq., Chair
Jeremy Ann Brown
Stephen R. Coffey, Esq.
Mary Ann Crotty
Lawrence S. Goldman, Esq.
Honorable Daniel F. Luciano
Honorable Frederick M. Marshall
Honorable Juanita Bing Newton
Alan J. Pope, Esq.
Honorable Eugene W. Salisbury
Honorable William C. Thompson

APPEARANCES:

Gerald Stern for the Commission

Honorable Donald G. Purple, Jr., pro se

The respondent, Donald G. Purple, Jr., a judge of the County Court and the Family Court, Steuben County, was served with a Formal Written Complaint dated February 19, 1997, alleging three charges of misconduct. Respondent filed an answer dated March 11, 1997.

On June 23, 1997, the administrator of the Commission and respondent 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 agreed upon facts, jointly recommending that respondent be censured and waiving further submissions and oral argument.

On July 10, 1997, the Commission approved the agreed statement and made the following determination.

As to Charge I of the Formal Written Complaint:

1. Respondent has been a judge of the Steuben County Court and Family Court since January 1, 1971.
2. On April 28, 1996, respondent consumed three beers between 7:00 A.M. and 1:00 P.M. and three manhattans between 1:30 P.M. and 4:00 P.M.
3. At about 4:00 P.M., respondent drove his automobile into a tree and sustained extensive physical injuries. He was charged with Driving While Intoxicated and Reckless Driving.
4. On June 3, 1996, respondent pleaded guilty to Driving While Intoxicated in satisfaction of both charges.

As to Charge II of the Formal Written Complaint:

5. On April 15, 1996, respondent presided over 50 cases during his morning calendar. At noon, he went to the Elk's Club and consumed three glasses of beer. He was

aware that his son, Greg, who is the court officer assigned to respondent's court, was also at the Elk's Club and was drinking alcoholic beverages.

6. Respondent left the Elk's Club and returned to his chambers, where he ate a sandwich. At 1:30 P.M., he presided over an ex parte request for a Temporary Order of Protection, the only matter on his afternoon calendar. He was under the influence of alcohol at the time.

7. At sometime prior to 3:00 P.M., respondent learned that his son had been removed from the courthouse by his superiors in the Steuben County Sheriff's Department because he appeared to have been intoxicated.

8. Respondent went to the sheriff's department and confronted Sheriff Jerry Dart and Sgt. Dale Scouten. Respondent demanded to know why his son had been removed from the courthouse. He was upset and angry.

9. Sheriff Dart explained that respondent's son appeared to have been intoxicated. Respondent loudly and angrily stated, "How can you do this to me? Why are you doing this to me? After all the support I've given you and your department, this is the way your deputies treat me."

10. Respondent was intoxicated. Sheriff Dart then ordered that respondent be driven home.

As to Charge III of the Formal Written Complaint:

11. The charge is not sustained and is, therefore, dismissed.

Supplemental finding:

12. Respondent now acknowledges that he is an alcoholic and has been drinking daily for the past 25 years. He has sought treatment for his alcohol problems; he was treated at an inpatient alcohol recovery facility from May 8, 1996, to May 27, 1996, and continued treatment with the Steuben County Alcohol and Substance Abuse Services from June 6, 1996, to November 12, 1996. He maintains that he has not consumed alcohol since April 29, 1996.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated the Rules Governing Judicial Conduct, 22 NYCRR 100.1, 100.2(A), 100.2(B) and 100.2(C), and Canons 1, 2A and 2B of the Code of Judicial Conduct. Charges I and II of the Formal Written Complaint are sustained, and respondent's misconduct is established. Charge III is dismissed.

A judge who drinks alcohol and drives violates the law and endangers public safety. (Matter of Henderson, 1995 Ann Report of NY Commn on Jud Conduct, at 118). Respondent's failure off the bench to abide by the laws that he is often called upon to apply in court undermines his effectiveness as a judge. (See, Matter of Wray, 1992 Ann Report of NY Commn on Jud Conduct, at 77, 80).

By presiding while under the influence of alcohol, he also compromised public confidence in his decisions and judgment. (See, Matter of Aldrich v State Commission on Judicial Conduct, 58 NY2d 279).

Moreover, in intervening with the sheriff on his son's behalf, respondent attempted to lend the prestige of his office to advance private interests. (See, Rules Governing Judicial Conduct, 22 NYCRR 100.2[C]; Matter of Wright, 1989 Ann Report of NY Commn on Jud Conduct, at 147).

Although serious, respondent's misconduct appears to have been the product of alcoholism for which he has subsequently sought treatment. Consequently, we conclude that he need not be removed from office. (See, Matter of Quinn v State Commission on Judicial Conduct, 54 NY2d 386, 393-94; Matter of Bradigan, 1996 Ann Report of NY Commn on Jud Conduct, at 71, 73). In addition, he has been a judge for more than 26 years, and his conduct has never before been called into question. (See, Matter of Edwards v State Commission on Judicial Conduct, 67 NY2d 153, 155).

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

Mr. Berger, Mr. Coffey, Ms. Crotty, Judge Luciano, Judge Marshall, Judge Newton, Mr. Pope, Judge Salisbury and Judge Thompson concur.

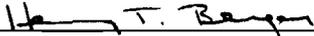
Mr. Goldman was not present.

Ms. Brown 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: September 29, 1997



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