

**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

LAWRENCE R. RICE,

a Justice of the Maine Town Court and
Acting Justice of the Johnson City Village
and Nanticoke Town Courts, Broome County.

Determination

THE COMMISSION:

Henry T. Berger, Esq., Chair
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

Levene, Gouldin & Thompson, L.L.P. (By David M. Gouldin)
for Respondent

The respondent, Lawrence R. Rice, a justice of the Maine Town Court, Broome County, was served with a Formal Written Complaint dated March 26, 1996, alleging that he exhibited improper demeanor and that he refused to permit attorneys to participate in small claims proceedings. Respondent did not answer the Formal Written Complaint.

On August 30, 1996, 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 September 12, 1996, 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 justice of the unified court system since 1990. He has attended all training sessions required by the Office of Court Administration.

2. On June 30, 1994, respondent arraigned Ethan Haskins on a charge of Assault, Third Degree. The district attorney's office was not represented at the arraignment but had previously informed respondent in writing that it was moving to dismiss the charge based on double-jeopardy considerations.

3. Respondent told the defendant's attorney, Scott Bowen, that his law partner and the prosecutor handling the case had acted improperly and unethically in discussing dismissal of the case in respondent's absence. Respondent said that he was

denying the motion because it had been made prior to arraignment and that Mr. Bowen would have to make a motion to the court.

4. Mr. Bowen and his client left the courtroom, but Mr. Bowen returned a short time later to discuss the matter with respondent. Respondent angrily told Mr. Bowen that he had "verbal diarrhea." He demanded to know who Mr. Bowen's "boss" was and told him to leave the courtroom or be held in contempt. As Mr. Bowen, who had run for district attorney in 1987, was leaving the courtroom, respondent said to his court clerk in a voice audible to Mr. Bowen, "Can you imagine that guy as district attorney?"

As to Charge II of the Formal Written Complaint:

5. Before August 1995, respondent refused to permit attorneys to fully participate in representing clients in small claims proceedings before him. Respondent wanted the parties to participate in small claims proceedings and was concerned about attorneys exercising excessive control in the courtroom. He has since learned that participation by attorneys is appropriate and should not be denied.

6. On March 16, 1995, in the small claims trial of Fraser v Lowell Baldwin dba Quality Homes, respondent refused to allow the attorney for Mr. Baldwin to participate in the proceeding and threatened to hold the attorney in contempt when he respectfully asserted his right to represent his client.

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), 100.3(a)(2)*, 100.3(a)(3)** and 100.3(a)(4)***, and Canons 1, 2A, 3A(2), 3A(3) and 3A(4) of the Code of Judicial Conduct. Charges I and II of the Formal Written Complaint are sustained insofar as they are consistent with the findings herein, and respondent's misconduct is established.

Respondent's heavy-handed treatment of Mr. Bowen and the attorney in the Baldwin small claims case--in both instances, prompted by misguided notions of the law--violated his duty to 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]; see, Matter of Tavormina, 1990 Ann Report of NY Commn on Jud Conduct, at 164; Matter of Taylor, 1983 Ann Report of NY Commn on Jud Conduct, at 197; Matter of Kaplan, 1980 Ann Report of NY Commn on Jud Conduct, at 179). It is not inappropriate for counsel to negotiate a disposition outside the presence of the judge, and parties have a constitutional right to representation in a small claims proceeding, as well as all other court matters.

*Now Section 100.3[B][2]

**Now Section 100.3[B][3]

***Now Section 100.3[B][6]

The judge should be the exemplar of dignity and impartiality. He shall suppress his personal predilections, control his temper and emotions, and otherwise avoid conduct on his part which tends to demean the proceedings or to undermine his authority in the courtroom. When it becomes necessary during trial for him to comment upon the conduct of witnesses, spectators, counsel, or others, or upon the testimony, he shall do so in a firm and polite manner, limiting his comments and rulings to what is reasonably required for the orderly progress of the trial, and refraining from unnecessary disparagement of persons or issues.

Matter of Sena, 1981
Ann Report of NY Commn
on Jud Conduct, at 117,
119, quoting the Rules
of the Appellate Division,
First Department, 22
NYCRR 604.1(e) (5)

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

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

Mr. Sample 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: January 31, 1997

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