

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

DAVID G. ROEPE,

a Justice of the Montgomery Village Court,
Orange 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 (Vickie Ma, Of Counsel) for the Commission
Richard E. Grayson for Respondent

The respondent, David G. Roepe, a justice of the Montgomery Town Court,
Orange County, was served with a Formal Written Complaint dated February 13, 2001,
containing one charge. Respondent filed an answer dated March 29, 2001.

On May 4, 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 censured and waiving further submissions and oral argument.

On May 10, 2001, the Commission approved the agreed statement and made the following determination.

1. Respondent, who is an attorney, has been a part-time justice of the Montgomery Village Court since 1972. Respondent presides over various matters including traffic cases, civil cases, small claims and criminal offenses.
2. Respondent and his wife, Hazelann Roepe, reside in separate homes, which are located on the same property in Montgomery, New York. There are three unattached dwellings located on the property. Mrs. Roepe lives alone in the main house; respondent and a 19-year-old son live in a carriage house, approximately 75 feet away; and a second adult son lives in a small house. All four of them have access to all three homes.
3. On or about May 10, 2000, at approximately 11:30 P.M., respondent entered the home in which Mrs. Roepe resides to look for his carving knife. Mrs. Roepe was asleep on the couch. Mrs. Roepe had moved the knife from where respondent had

kept it in the carriage house.

4. When respondent found his carving knife in the kitchen, he woke Mrs. Roepe and confronted her by shouting derogatory names at her, while holding the knife in his hand. As respondent stood next to Mrs. Roepe, he waved the knife at her and shouted that he would “run [her] through,” or words to that effect, if she ever upset him again by taking his knife and things without his permission as she had done in the past. At times, the knife came within 4 to 8 inches of Mrs. Roepe’s throat. All the while, Mrs. Roepe lay supine on the couch.

5. Respondent testified that since the time he had arrived home from work at about 7:00 to 7:30 P.M., he had consumed “at least two or three” glasses of red wine and speculated that he “could have had the whole [bottle]” as he did not “know if there was any wine left in the bottle” at the time of his arrest.

6. Once respondent left the home, Mrs. Roepe ran outside to call a friend.

7. Respondent’s actions caused Mrs. Roepe to be in fear of physical injury.

8. Respondent was thereafter arrested and charged with Menacing in the Second Degree. The incident was reported in a local newspaper.

9. On or about August 18, 2000, the Orange County District Attorney’s office dismissed the charge so that the matter could be handled in Family Court. Mrs.

Roepe did not pursue the criminal matter in Family Court.

10. Respondent and his wife have been married for 42 years and continue to reside in their separate homes on the same property. There is no prior or subsequent history of domestic abuse or violence to Mrs. Roepe by respondent. According to Mrs. Roepe, who does not want any disciplinary or criminal action to be taken against respondent, the actions of respondent were totally out of character with respondent's personality and the way he has treated her. There is no evidence to the contrary. Respondent has been cooperative and candid in all respects in the investigation, has expressed remorse for his conduct, and appears to be a non-violent, peaceful and decent person.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 100.1 and 100.2(A) of the Rules Governing Judicial Conduct. Charge I of the Formal Written Complaint is sustained, and respondent's misconduct is established.

As the Court of Appeals has held, on or off the bench, a judge remains "clothed figuratively with his black robe of office devolving upon him standards of conduct more stringent than those acceptable for others." Matter of Kuehnel v. Comm. on Jud. Conduct, 49 NY2d 465, 469 (1980). Any conduct, on or off the bench, "inconsistent with proper judicial demeanor subjects the judiciary as a whole to disrespect

and impairs the usefulness of the individual judge to carry out his or her constitutionally mandated function.” Matter of Kuehnel, *supra*.

Respondent’s conduct clearly violated the high standards of conduct which judges are obliged to observe “at all times,” both on and off the bench (Section 100.1 of the Rules Governing Judicial Conduct). Angrily confronting his wife, who had upset him by taking a knife that belonged to him, respondent waved the knife close to her throat and threatened to “run [her] through” if she ever upset him again by repeating such conduct. For one who holds a position of public trust, and who presides over cases involving domestic violence in which he is called upon to pass judgment over the actions of others, such conduct raises serious questions as to respondent’s ability to administer the law effectively and impartially. Matter of Benjamin v. State Comm. on Jud. Conduct, 77 NY2d 296 (1991); Matter of Stiggins, 2001 Ann Rep 123 (Comm. on Jud. Conduct).

Although respondent was not convicted of a crime, his admitted conduct constitutes a violation of law (*see* Penal Law §120.14[1]¹). The fact that respondent’s spouse has not pursued the criminal matter in Family Court does not mitigate the wrongfulness of his conduct. When an angry confrontation in a domestic setting crosses the line into a threat of physical violence underscored by brandishing a deadly weapon, there can be no defense to a charge of judicial misconduct that the conduct occurred

¹ Under the statute, a person is guilty of Menacing in the Second Degree when he or she intentionally places or attempts to place another person in reasonable fear of physical injury, serious physical injury or death by displaying a deadly weapon or dangerous instrument.

within the privacy of the home, since even there a judge's conduct may impact upon the judicial role. Matter of Backal v. Comm. on Jud. Conduct, 87 NY2d 1, 8 (1995). Where, as here, respondent has admitted the underlying conduct in a publicly-reported incident, there can be no doubt that public perception of the judiciary is affected.

While it appears that respondent's conduct may have been affected by his consumption of alcohol, there is no indication from this record that alcohol has affected his judicial performance, or that there is a pattern of such conduct.

In imposing the sanction of censure, rather than removal from office, we do not minimize the seriousness of respondent's behavior. In mitigation, we have considered that respondent's conduct appears to be an isolated, uncharacteristic incident in his marriage of 42 years; that he has been candid, cooperative and contrite throughout this proceeding; and that his record is otherwise unblemished in 29 years as a judge.

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

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

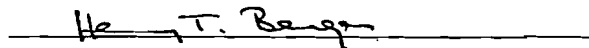
Judge Ciardullo dissents on the basis that the facts as set forth in the agreed statement are insufficient to enable the Commission to make a determination.

Judge Luciano was not present.

CERTIFICATION

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

Dated: June 27, 2001

A handwritten signature in cursive script, reading "Henry T. Berger", is written over a solid horizontal line.

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