

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

JOHN E. CIPOLLA,

DETERMINATION

an Acting Justice of the Depew Village Court,
Erie 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
Mary Holt Moore
Honorable Karen K. Peters
Alan J. Pope, Esq.
Honorable Terry Jane Ruderman

APPEARANCES:

Gerald Stern (John J. Postel, Of Counsel) for the Commission

Duke, Holzman, Yaeger & Photiadis, LLP (By Gregory P. Photiadis)
for Respondent

*Judge Marshall died on September 10, 2002. The vote in this case was taken on June 20, 2002.

The respondent, John E. Cipolla, an Acting Justice of the Depew Village Court, Erie County, was served with a Formal Written Complaint dated July 31, 2001, containing three charges. Respondent filed an answer dated September 17, 2001.

By Order dated October 1, 2001, the Commission designated Patrick J. Berrigan, Esq., as referee to hear and report proposed findings of fact and conclusions of law. A hearing was held on January 28, 2002, in Buffalo, New York, and the referee filed his report dated April 30, 2002, with the Commission.

The parties submitted briefs with respect to the referee's report. On June 20, 2002, the Commission heard oral argument, at which respondent and his counsel appeared, and thereafter considered the record of the proceeding and made the following findings of fact.

1. Respondent has been an acting Village Justice for the Village of Depew since March 1999.
2. Respondent has attended and successfully completed all required training sessions for justices, where he received instruction on the Rules Governing Judicial Conduct. He also attended the State Magistrates Association meeting in 1999, where he was provided additional instruction on the Rules Governing Judicial Conduct.
3. Respondent is a law school graduate who has not been admitted to the Bar of the State of New York.
4. In December 1999, respondent was a principal and vice president of

Bella Vista Group, Inc., a real estate business owned by respondent's family, where he was also regularly employed.

As to Charge I of the Formal Written Complaint:

5. On December 3, 1999, respondent and Michelle Spahn, who had been dating for a few months, went to dinner to celebrate respondent's birthday. They drove in Ms. Spahn's vehicle. After dinner, respondent drove them in Ms. Spahn's vehicle to a comedy club located in Amherst, New York.

6. While on the way to the comedy club, Ms. Spahn spoke with her sister by telephone, an act which irritated respondent, who told Ms. Spahn that she should pay more attention to him. Upon arriving at the comedy club, Ms. Spahn asked respondent to return the vehicle keys to her. Respondent refused to do so, and walked into the club.

7. Ms. Spahn refused to go into the showroom with respondent after he refused to return her keys. Inside the club she again asked respondent for the keys to her vehicle and he again refused. Respondent entered the showroom without Ms. Spahn.

8. Ms. Spahn complained to several employees of the club that respondent had refused to return her car keys and asked for help in getting the keys returned to her. Several employees became involved on Ms. Spahn's behalf, including the club's doorman, Kevin Schadel. When Mr. Schadel asked respondent, who was sitting alone in the showroom, to return Ms. Spahn's keys, respondent produced and

displayed an identification card and badge that identified him as the Village of Depew acting judge. Respondent also stated that he was an acting judge.

9. In his verified answer, respondent stated that he “admits identifying himself as a judge in response to a request for identification.” Mr. Schadel had not asked respondent for identification.

10. At the time he identified himself as a judge, respondent was aware of his obligation not to assert the prestige of judicial office in connection with a personal dispute.

11. Respondent refused to return Ms. Spahn’s vehicle keys and stated that the vehicle was his. That statement was untrue.

12. In his verified answer, respondent stated that he refused to return Ms. Spahn’s keys “because Ms. Spahn had been consuming alcohol and was, in respondent’s opinion, unable to safely operate a motor vehicle.” At the hearing, respondent retracted any claim that Ms. Spahn was unable to safely operate a motor vehicle due to the consumption of alcohol.

13. Respondent refused twice more to return Ms. Spahn’s vehicle keys when Mr. Schadel asked him to do so. The third time Mr. Schadel asked him to return the keys, respondent indicated that he would come to the lobby to address the issue. Instead, respondent left the showroom by a back door and hurried to Ms. Spahn’s vehicle.

14. Ms. Spahn ran after respondent into the parking lot and asked him again for the keys. Respondent again refused to return the keys and told Ms. Spahn to get

into the car if she wanted a ride. Ms. Spahn did not get into the car, and respondent drove away without her.

15. As this incident was occurring, Ms. Spahn was becoming physically upset and began to cry. Club employees had suggested that Ms. Spahn call the Amherst police, and she agreed. The Amherst police arrived at the club after respondent had left.

16. Respondent drove Ms. Spahn's vehicle to his home, leaving the vehicle in the driveway with the keys in the vehicle. He then went to the home of a friend.

17. The Amherst police took Ms. Spahn to respondent's home, where she retrieved her car.

18. On or about December 6, 1999, Ms. Spahn filed a criminal complaint with the Amherst Police Department against respondent for the unauthorized use of her vehicle. The complaint was dismissed.

As to Charge II of the Formal Written Complaint:

19. On December 3, 1999, at about 11:30 AM, respondent sent a letter by facsimile transmission on the letterhead of Bella Vista Group, Inc., to the United States Drug Enforcement Administration ("DEA"). Respondent's letter sought to confirm Ms. Spahn's prior employment with DEA and that she had left the agency "on good terms," and requested any other relevant information as to Ms. Spahn's "character in accepting a high-level security position."

20. Respondent's December 3 letter to DEA falsely represented that Bella Vista Group had a job application from Ms. Spahn.

21. At the time that respondent sent the letter to DEA, respondent knew that Ms. Spahn had not applied for any position of employment with Bella Vista Group, Inc. Ms. Spahn had not asked respondent for assistance in securing employment and had not requested that she be considered for employment by Bella Vista Group, Inc.

22. Respondent, who had dinner with Ms. Spahn on December 3, 1999, did not inform Ms. Spahn that he had sent the letter to DEA and never showed Ms. Spahn a copy of the letter.

23. DEA subsequently informed respondent in writing that it could not release the requested information because Ms. Spahn was suing that agency. After his relationship with Ms. Spahn had ended and after receiving DEA's response, respondent withdrew his request for information.

24. Respondent acknowledged that sending the December 3, 1999, letter to DEA was a "mistake" and that there was "no excuse" for sending it.

As to Charge III of the Formal Written Complaint:

25. On September 16, 1999, Michelle Spahn was charged with Speeding in the Town of Amherst. She mailed to the court a plea of not guilty and received a letter from the court dated October 29, 1999, scheduling her appearance for December 6, 1999.

26. During the course of their dating relationship, Ms. Spahn advised

respondent about her Speeding ticket and told respondent that she was scheduled to appear in the Amherst Town Court on December 6, 1999. On several occasions, Ms. Spahn asked respondent if he could help her. Respondent told Ms. Spahn that he knew Amherst Town Justice Samuel Maislin, who would probably be scheduled to preside over her case.

27. Before Ms. Spahn appeared in court on December 6, 1999, respondent telephoned Judge Maislin, identified himself by name and told Judge Maislin that his girlfriend had received a Speeding ticket and that he wanted to take care of it for her. Respondent asked about the fine and was advised that the fine would be \$100. Respondent was on "friendly" terms with Judge Maislin, although there is no evidence in the record that Judge Maislin knew that respondent was a judge.

28. Although Ms. Spahn had not pleaded guilty to any charge, her Speeding ticket was reduced to a charge of violating Section 1201(a) of the Vehicle and Traffic Law, a parking violation; a guilty plea was entered; and a fine of \$100 was assessed. Respondent went to Judge Maislin's private law office and gave Judge Maislin a \$100 bill in payment of Ms. Spahn's fine.

29. Before going to court on December 6, 1999, Ms. Spahn was unaware of respondent's conduct with respect to her ticket, although respondent told her that she did not have to go to court because her ticket had been taken care of. Ms. Spahn did not believe respondent and appeared in the Amherst Town Court on the scheduled date.

30. When Ms. Spahn appeared in court on December 6, 1999, an

assistant district attorney told Ms. Spahn that her Speeding ticket had been reduced to a non-moving violation, and Ms. Spahn observed a \$100 bill clipped to the court case folder.

31. Prior to that time, Ms. Spahn had not spoken about the disposition of her case with the police officer who issued the ticket, the assistant district attorney or the presiding judge; nor had she entered a guilty plea.

32. Ms. Spahn waited in court for two hours to find out what had happened. When her case was not called, she questioned the court clerk about the case and overheard the presiding judge tell the clerk that “that one’s been taken care of.”

33. Respondent knew that it was improper for him to attempt to fix a traffic ticket for a friend, although he testified that, at the time, he did not realize he was doing anything wrong in contacting Judge Maislin. At the hearing, respondent acknowledged that his conduct with respect to Ms. Spahn’s ticket was wrong.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 100.1, 100.2(A), 100.2(C), 100.4(A)(1) and 100.4(A)(2) of the Rules Governing Judicial Conduct. Charges I, II and III of the Formal Written Complaint are sustained, and respondent’s misconduct is established.

Both on and off the bench, judges are held to standards of conduct “much higher than for those of society as a whole.” Matter of Kuehnel v. Commn on Jud Conduct, 49 NY2d 465, 469 (1980). Even wholly personal conduct may be subject to

discipline, especially when it relates to the judge's honesty and integrity or reflects adversely on the judiciary as a whole. *See, e.g., Matter of Miller*, 1997 Annual Report 108 (Comm'n on Jud Conduct) (judge was censured, in part, for sending anonymous, harassing mailings concerning an individual with whom she had had a personal relationship); *Matter of Smith*, 1995 Annual Report 137 (Comm'n on Jud Conduct) (judge was censured, in part, for engaging in an angry, physical confrontation at a street fair); *Matter of Mazzei v. Comm'n on Jud Conduct*, 81 NY2d 568, 572 (1993) (judge was removed for filing two fraudulent credit card applications in the name of his deceased mother). A judge is obligated at all times to act in a manner that promotes public confidence in the integrity of the judiciary, to avoid even the appearance of impropriety and to conduct his or her extra-judicial activities so as not to detract from the dignity of judicial office (Sections 100.2[A] and 100.4[A][2] of the Rules Governing Judicial Conduct).

In the instant case, respondent's conduct in a series of off-the-bench incidents showed poor judgment and insensitivity to the high ethical standards incumbent on judges. The record establishes that respondent improperly asserted his judicial office to advance his private interests, wrote a letter to a federal agency seeking personal information about an individual under false pretenses, and interceded on behalf of another to obtain a favorable disposition in a traffic case. Such conduct affects public confidence in the integrity of the judiciary, even though it is unrelated to a judge's performance on the bench.

Respondent's gratuitous reference to his judicial office during the incident at the comedy club inappropriately interjected his judicial status into a private dispute. The ethical rules explicitly prohibit a judge from lending the prestige of judicial office to advance the judge's private interests (Section 100.2[C] of the Rules). As the referee concluded, respondent's conduct was a blatant attempt to use his identity as a judge to gain advantage in the dispute, which was provoked by respondent's own boorish, bullying behavior in refusing to return the car keys to the car's owner. Compounding the impropriety, respondent invoked his judicial status at least in part to lend credibility to a statement (that the car belonged to him) that was patently untrue. Respondent's unseemly, dishonest, public misbehavior detracted from the dignity of his judicial office and elevated personal impropriety to judicial misconduct.

Respondent's letter to the Drug Enforcement Administration (DEA) was deceptive and dishonest. Sending such a letter, which requested personal information about an individual under false pretenses, was highly improper, notwithstanding that the letter made no reference to respondent's judicial position. As the Court of Appeals has stated:

Judges personify the justice system upon which the public relies to resolve all manner of controversy, civil and criminal. A society that empowers judges to decide the fate of human beings and the disposition of property has the right to insist upon the highest level of judicial honesty and integrity. A judge's conduct that departs from this high standard erodes the public confidence in our justice system so vital to its effective functioning.

Matter of Mazzei, *supra*, 81 NY2d at 571-72

It was also inappropriate for respondent to intervene in his friend's Speeding case by contacting the presiding judge. The absence of a specific request for special consideration is irrelevant, since a communication from one judge to another on behalf of a friend's pending case necessarily taints the proceeding with favoritism. *See Matter of Edwards v. Commn on Jud Conduct*, 67 NY2d 153, 155 (1986). In the instant matter, even if the resulting reduction would have been available without respondent's intervention, it can scarcely be doubted that respondent's friend's ticket received extraordinary treatment as a result of his discussion with the presiding judge, with whom respondent was on "friendly" terms: the matter was adjudicated as a result of a phone call, prior to the scheduled court appearance, without a guilty plea; and respondent personally paid the fine at the law office of the presiding judge. Such conduct seriously undermines public confidence in the fair and proper administration of justice.

Viewed in its totality, respondent's conduct is indefensible. Moreover, we are also troubled by the inconsistencies in respondent's explanations of the incident at the comedy club and by the dishonesty reflected in his letter to DEA. While respondent's misconduct is serious, we have concluded that it does not irretrievably damage his effectiveness on the bench. This is so, in part, because respondent's misconduct was largely personal in nature and occurred over a brief period during his first year on the bench.

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

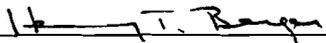
Mr. Berger, Judge Ciardullo, Mr. Coffey, Mr. Goldman, Ms. Moore, Judge Luciano, Judge Peters and Judge Ruderman concur.

Ms. Hernandez, Judge Marshall and Mr. Pope were not present.

CERTIFICATION

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

Dated: October 1, 2002


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