

STATE OF NEW YORK  
COMMISSION ON JUDICIAL CONDUCT

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In the Matter of the Proceeding  
Pursuant to Section 44, subdivision 4,  
of the Judiciary Law in Relation to

**DETERMINATION**

JOSEPH ESPOSITO, SR.,

a Justice of the Kent Town Court,  
Putnam County.

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THE COMMISSION:

Henry T. Berger, Esq., Chair  
Honorable Frances A. Ciardullo  
Stephen R. Coffey, Esq.  
Raoul Lionel Felder, 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 (Vickie Ma, Of Counsel) for the Commission

Frank E. Redl and Marvin Ray Raskin for Respondent

The respondent, Joseph Esposito, a justice of the Kent Town Court, Putnam County, was served with a Formal Written Complaint dated October 1, 2002, containing

three charges. Respondent filed an answer dated January 15, 2003.

On February 7, 2003, the Administrator of the Commission, respondent's counsel and respondent entered into an Agreed Statement of Facts, agreeing 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 September 18, 2003, the Commission approved the Agreed Statement of Facts and made the following determination.

1. Respondent has been a justice of the Kent Town Court since 1989. He is not an attorney.

As to Charge I of the Formal Written Complaint:

2. W. James Dove was a Kent Town justice from 1987 to December 1998. He is not an attorney. His wife is Jean Morris.

3. By January 1999, the relationship between respondent and former Judge Dove had become contentious. Among other things, respondent and Judge Dove filed complaints against each other with the Commission prior to January 1999.

Respondent was aware that Judge Dove had filed at least one complaint against him prior to January 1999.

4. In January 1999, Christopher Boryk was the newly appointed tax assessor for the Town of Kent.

5. In January 1999, respondent approached Mr. Boryk in Town Hall, introduced himself, showed Mr. Boryk some highlighted papers of a property assessment and inventory belonging to Jean Morris, Mr. Dove's wife, and complained that the property tax assessment was too low and should be raised. Mr. Boryk advised respondent that he could not selectively reassess one property and that what respondent was asking him to do was improper. In the course of their discussion, respondent indicated that he was a judge.

6. In February 2001, when Mr. Boryk had not taken any action on respondent's complaint about Mr. Dove's property assessment, respondent complained to Annmarie Baisley, the Kent Town Supervisor. Ms. Baisley serves on the Kent Town Board and is Mr. Boryk's supervisor. Ms. Baisley agreed to look into the matter and thereafter asked Mr. Boryk to review Mr. Dove's property assessment. Thereafter, as a result of a countywide reassessment, Mr. Dove's property assessment was increased by 74%.

7. Respondent now appreciates that, whether on or off the bench, he must avoid putting himself in situations where he even appears to be using the prestige of his judicial office to advance a private purpose.

As to Charge II of the Formal Written Complaint:

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

As to Charge III of the Formal Written Complaint:

9. Respondent and his son, Joseph Esposito, Jr., lived at the same address until 2000, when respondent's son moved out after getting married.

10. In October 2000, respondent accompanied his son to an automobile dealership, GMC Pontiac Meadowland of Carmel ("Meadowland"), in connection with his son's interest in purchasing a truck. Respondent's son contracted to purchase the truck, and in February 2001 respondent accompanied his son to Meadowland to pick it up. In connection with his purchase of the vehicle, respondent's son provided Meadowland with respondent's address, although he was no longer living there at the time.

11. On June 14, 2001, Meadowland served a Summons and Complaint on respondent that was evidently meant for his son. The Meadowland papers identified the defendant as "Joseph Esposito." Respondent knew from conversations with his son that Meadowland had claimed there was an unpaid balance on the truck his son had bought.

12. Several days later, respondent telephoned the attorney for Meadowland, identified himself as "Joseph Esposito," confirmed his address and stated that he had not purchased a truck. Respondent did not indicate that he was Joseph Esposito, "Sr." or that there was a Joseph Esposito, "Jr."

13. On June 19, 2001, respondent, acting without counsel, interposed an Answer in the *Meadowland* case. Respondent's Answer denied knowledge or

information sufficient to form a belief as to the truth or falsity of the allegations pertaining to the purchase of the vehicle.

14. Respondent's Answer also alleged that Meadowland's action was without merit and was designed to harass him and impugn his reputation.

15. Subsequent to respondent's Answer, Meadowland's attorney filed a Demand for Interrogatories and thereafter moved to strike respondent's Answer for failure to respond to the Demand for Interrogatories.

16. Respondent retained counsel, and on February 28, 2002, in a preliminary conference before the Supreme Court Justice to whom the case was assigned, respondent's counsel disclosed for the first time that a truck had been purchased not by respondent but by respondent's son.

17. Respondent now recognizes that, as a judge, he had a duty under the circumstances to be candid in the litigation and that he should not have denied knowledge of his son's purchase of the truck.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 100.1, 100.2 and 100.4(A)(2) of the Rules Governing Judicial Conduct.<sup>1</sup> Charges I and III of the Formal Written Complaint are sustained insofar as they are consistent with the above facts, and respondent's misconduct

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<sup>1</sup> Although the Commission was barred from enforcing Sections 100.1 and 100.2(A) of the Rules by the U.S. District Court in *Spargo v. NYS Comm'n on Jud Conduct*, 244 F Supp2d 72 (NDNY 2003), the U.S. Court of Appeals for the Second Circuit on May 20, 2003, stayed the injunction in *Spargo* pending appeal. Accordingly, there is no bar to enforcing those provisions.

is established. Charge II is not sustained and is, therefore, dismissed.

Respondent's conduct was inconsistent with the high standards of conduct that judges are required to observe both on and off the bench.

By referring to his judicial office while complaining to the newly-appointed tax assessor that a particular assessment was too low, respondent conveyed the appearance of using the prestige of his judicial status for a private purpose. Regardless of the merits of respondent's complaint, it was improper for respondent to refer to his judicial status in connection with the matter. *See, e.g., Matter of Lonschein v. State Commn on Jud Conduct*, 50 NY2d 569, 571-72 (1980). Moreover, in singling out the assessment of property owned by the wife of his former colleague, with whom he had a contentious relationship, respondent's conduct created the appearance that he was retaliating against the individual, who had previously made a complaint about respondent to the Commission.

As a judge who is sworn to uphold the law and seek the truth, respondent has a duty to be candid in the litigation process. 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 v. Commn on Jud Conduct*, 81 NY2d 568, 571-72 (1993). Respondent

did not respond candidly in his Answer to Meadowland's Complaint when he denied knowledge or information sufficient to respond to the allegations, despite having accompanied his son to the dealership and knowing of his son's billing dispute. Nor was he candid in discussing the matter with the plaintiff's attorney. Respondent's deceptive conduct, in an apparent effort to shield his son by thwarting the litigation process, was improper. Judges are held to stricter standards than "the morals of the market place" and are required to observe "standards of conduct on a plane much higher than for those of society as whole...so that the integrity and independence of the judiciary will be preserved." *Matter of Spector v. Commn on Jud Conduct*, 47 NY2d 462, 468 (1979), quoting *Meinhard v Salmon*, 249 NY 458, 464; *Matter of Kuehnel v. Commn on Jud Conduct*, 49 NY2d 465, 469 (1980).

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

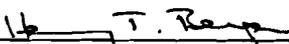
Mr. Berger, Judge Ciardullo, Mr. Coffey, Mr. Felder, Mr. Goldman, Ms. Hernandez, Judge Peters, Mr. Pope and Judge Ruderman concur.

Judge Luciano and Ms. Moore were not present.

CERTIFICATION

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

Dated: September 22, 2003



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