

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

NORMAN FEIDEN,

a Judge of the Family Court, Nassau
County.

THE COMMISSION:

Henry T. Berger, Esq., Chair
Honorable Myriam J. Altman
Helaine M. Barnett, Esq.
Herbert L. Bellamy, Sr.
Honorable Carmen Beauchamp Ciparick
E. Garrett Cleary, Esq.
Dolores Del Bello
Lawrence S. Goldman, Esq.
Honorable Eugene W. Salisbury
John J. Sheehy, Esq.
Honorable William C. Thompson

APPEARANCES:

Gerald Stern (Alan W. Friedberg, Of Counsel) for
the Commission

Lyman & Tenenbaum, P.C. (By Irving Tenenbaum) for
Respondent

The respondent, Norman Feiden, a judge of the Family Court, Nassau County, was served with a Formal Written Complaint dated October 22, 1991, alleging that he made improper comments in court and to a newspaper reporter concerning a custody proceeding pending before him. Respondent did not answer the Formal Written Complaint.

On March 25, 1992, 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) and stipulating that the Commission make its determination based on the pleadings and the agreed upon facts. The Commission approved the agreed statement by letter dated March 31, 1992.

The administrator and respondent filed memoranda as to sanction.

On June 4, 1992, the Commission heard oral argument, at which respondent and his counsel appeared, and thereafter considered the record of the proceeding and made the following determination.

1. Respondent has been a judge of the Nassau County Family Court since January 1985.

2. On December 6, 1990, respondent presided over Carla C. v. William C., a custody proceeding in which the litigants and their children are Jewish. Philip Sands, Esq., appeared representing the mother; Michael D. Solomon, Esq., appeared representing the father, and Alfred Reinbarz, Esq., appeared as law guardian.

3. The father requested visitation with his children on Christmas Eve and Christmas day. Respondent said, "I don't hear anybody say Hanukkah."

4. Mr. Sands said that the mother wanted to be with her children on Christmas Eve and Christmas day because she puts up a tree and gives gifts to the children. Respondent replied, "Sounds wonderful. Don't--you're talking to the wrong guy. I get offended, and I don't want to start."

5. Mr. Sands stated that he had been referring to a gift-giving process. Respondent rejoined, "Oh, come on. It's very Christian. It's idol worship. It's everything else."

6. Respondent subsequently gave the father visitation from 4:00 P.M. on Christmas Eve until 9:00 P.M. on Christmas day.

7. Respondent acknowledges that his above statements were inappropriate and improper and that they were influenced by his personal views about religion.

8. On December 27, 1990, respondent was told by the public information officer for the Nassau County courts that a newspaper reporter wanted to interview respondent about Carla C. v. William C.

9. Respondent consented to be interviewed and, during the interview, stated, "I understand the Christmas tree to be an expression of devotion by people who actively practice the Christian faith." He said that for the mother to be "using a devout celebration to be merely decorative and then using it as an excuse to manipulate the custody situation is not acceptable." The remarks were published in a Newsday article about the case on December 28, 1990.

10. Respondent acknowledges that it was improper to make public comments about a pending custody case and that it was inappropriate to criticize a litigant in a pending case.

11. On January 2, 1991, while presiding over Carla C. v. William C., respondent made the following statements, which he acknowledges were inappropriate and improper and were influenced by his personal views about religion:

a) that respondent wanted to educate Mr. Sands and that Christmas trees originated in Germany as a pagan ritual;

b) that it is irreverent for members of the Jewish faith to use Christmas trees and lights and to exchange Christmas gifts;

c) that the "celebration of Christmas is a celebration of the birth of the Christ child" which "is holy, very reverent and central to the theme of Christmas, and that's what celebrating of Christmas means";

d) that the "originality of the Christmas tree" is "a pagan custom and converted into a holy Christian custom in the Christmas--Christian celebration of Christmas";

e) that "any celebration without the religious content for Christmas" is "idol worship"; and,

f) that Mr. Sands's statement that his client followed a "gift-giving process" made her conduct "idol worship."

12. On January 2, 1991, respondent denied Mr. Sands's motion that respondent disqualify himself because of his inappropriate statements. On April 1, 1991, the Appellate Division, Second Department, reversed respondent's decision not to remove himself. The higher court ordered the case remitted to Family Court for proceedings before another judge.

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, 100.3(a)(3) and 100.3(a)(6); Canons 1, 2, 3A(3) and 3A(6) of the Code of Judicial Conduct, and the Special Rules Concerning Court Decorum of the Appellate Division, Second Department, 22 NYCRR 700.5(a) and 700.5(e). The charge in the Formal Written Complaint is sustained, and respondent's misconduct is established.

Respondent made improper statements on three occasions which, he concedes, were prompted by his personal views about religion. Each time, he disparaged the practices of one of the litigants in a case pending before him--once in an interview with a newspaper reporter. A judge's personal feelings about the holiday observances of litigants have no place in the courtroom. Respondent's criticism of the mother's practices of putting up a Christmas tree and giving gifts to her children, followed by his determination to grant the father visitation on Christmas, gave the appearance that his decision was based on his views that a

Jewish family should not observe Christmas. (See, Matter of Levine v. State Commission on Judicial Conduct, 74 NY2d 294; Matter of Friess, 1984 Ann Report of NY Commn on Jud Conduct, at 84).

Respondent repeated and expounded upon his criticism in a later court appearance and in a discussion with a newspaper reporter in which he added that the mother was using her holiday observance to "manipulate the custody situation...." This demonstrates respondent's insensitivity to the limits placed on a judge. Such repeated comments undermine public confidence in the impartiality of the judiciary.

A judge should not make any public comments concerning a pending case. (Rules Governing Judicial Conduct, 22 NYCRR 100.3[a][6]). Respondent's remarks were especially improper because they conveyed the impression of partiality. (See, Matter of Sweetland, 1989 Ann Report of NY Commn on Jud Conduct, at 127). Respondent's misconduct is mitigated somewhat by the fact that he did not initiate the contact with the reporter but was placed in a situation in which he apparently felt that he had to defend his previous remarks.

Although respondent has acknowledged that his comments were inappropriate and improper, his attempts before the Commission at oral argument to justify his conduct indicate a continuing inability to fully appreciate the nature of his misconduct. (See, Matter of Sims v. State Commission on Judicial Conduct, 61 NY2d 349, 356).

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

Mr. Berger, Judge Altman, Ms. Barnett, Mr. Bellamy, Judge Ciparick, Mrs. Del Bello, Mr. Goldman and Judge Salisbury concur.

Judge Thompson did not participate.

Mr. Cleary and Mr. Sheehy were 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: July 29, 1992

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