

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

EDWARD J. GREENFIELD,

a Justice of the Supreme Court,
New York County.

THE COMMISSION:

Mrs. Gene Robb
Honorable Myriam J. Altman
Henry T. Berger, Esq.
John J. Bower, Esq.
Honorable Carmen Beauchamp Ciparick
E. Garrett Cleary, Esq.
Dolores DelBello
Victor A. Kovner, Esq.
Honorable Isaac Rubin
Honorable Eugene W. Salisbury
John J. Sheehy, Esq.

APPEARANCES:

Gerald Stern (Robert H. Tembeckjian, Of Counsel) for
the Commission

Shea & Gould (By Milton S. Gould; Jonathan D. Kantor,
Of Counsel) for Respondent

Jay D. Fischer for Respondent

The respondent, Edward J. Greenfield, a justice of the
Supreme Court, 1st Judicial District, was served with a Formal
Written Complaint dated August 9, 1988, alleging that he delayed

disposing of pending matters in numerous cases. Respondent filed an answer dated February 28, 1989.

By order dated January 19, 1989, the Commission designated the Honorable Matthew J. Jasen as referee to hear and report proposed findings of fact and conclusions of law. A hearing was held on March 8, 1989, and the referee filed his report with the Commission on May 18, 1989.

By motion dated June 6, 1989, the administrator of the Commission moved to confirm the referee's report and for a finding that respondent be censured. Respondent opposed the motion on July 7, 1989. The administrator filed a reply on July 10, 1989.

On July 18, 1989, 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 a justice of the Supreme Court since January 1, 1969. He was a judge of the Civil Court of the City of New York from 1964 to 1968.

2. Corporation of the Presiding Bishop of the Church of Jesus Christ of Latter Day Saints v. Solow Building Corp. was tried before respondent in May and June 1979. Final submissions to respondent were in September 1979. Despite several communications to respondent and his law secretary from the

plaintiff's counsel in 1981, 1984, 1985 and 1986, respondent did not decide the matter. The plaintiff subsequently commenced an Article 78 proceeding to compel a decision. Respondent decided the case on April 3, 1987.

3. In May 1982, the defendant in Murray Schwartz v. Arthur Tessler, M.D. moved to dismiss for failure to make a prima facie case after a trial in which the jury was deadlocked. Respondent granted the motion in July 1983. In February 1984, the plaintiff moved for a new trial on the basis of newly-discovered evidence. Respondent denied the motion on June 30, 1986.

4. On October 2, 1984, the plaintiff in Scalamandre Silks, Inc. & Scalamandre Wallpaper v. Consolidated Edison of New York moved to vacate respondent's earlier dismissal of the action and to restore the matter to the trial calendar. The plaintiff's counsel communicated with respondent's chambers approximately 24 times, requesting a decision on the motion. On May 17, 1985, the plaintiff brought an Article 78 proceeding to compel a decision. Respondent granted the motion on May 28, 1985, while he was hospitalized as the result of a heart attack.

5. On November 2, 1981, the plaintiffs in Silk & Bunks, P.C. v. Stanley Danzig brought a motion to impress a trust on funds alleged to have been wrongfully taken. Final submissions to respondent were on November 16, 1981. On November 16, 1981,

from the bench, respondent ordered that other property be returned to the plaintiffs forthwith. On December 7, 1981, the plaintiffs brought a motion to hold the defendant in contempt for failure to comply with respondent's order. That issue was referred to a referee, and final submissions on the referee's report to respondent were in January 1983. The plaintiff's counsel communicated with respondent in July 1983 and January 1984. On April 11, 1984, the plaintiffs brought an Article 78 proceeding to compel a decision. On June 14, 1984, the Appellate Division, First Department, granted the Article 78 petition. The issues were resolved by the parties on June 19, 1984. Respondent testified in this proceeding that he deliberately withheld rendering a decision on the motions because of allegations made against the defendant, a former judge, and his wife, a sitting judge, that respondent felt would have "repercussions" on the "reputation and integrity of the court" were he to issue a public opinion.

6. The plaintiff in Prince Carpentry v. Cosmopolitan Mutual Insurance Co. et al. moved for summary judgment on November 25, 1981. Counsel made several requests of respondent for a decision through May 1983. On December 20, 1983, an Article 78 proceeding was brought to compel a decision. Respondent issued a decision on January 23, 1984.

7. In May 1979, a defendant in Michael De Candia v. Hudson Waterways, Inc. et al. moved to dismiss the complaint.

Final submissions to respondent were in August 1979. In December 1982, a third-party defendant moved to dismiss the complaint against him for lack of jurisdiction. A defendant cross-moved for leave to conduct discovery on the question of jurisdiction. On October 22, 1986, respondent granted the motion to dismiss the third-party complaint and denied the motion for discovery. On October 31, 1986, respondent denied the defendant's motion to dismiss.

8. The defendant in Starkaiser Matos Pires v. Frota Oceanica Brasileira S.A. et al. moved in February 1978 for an order to strike the plaintiff's notice to take a deposition. Final submissions to respondent were in the same month. Respondent did not decide the motion until May 26, 1987. The plaintiff moved in December 1978 for an order striking a defendant's answer for failure to produce witnesses for deposition. Final submissions to respondent on that motion were in the same month. Respondent denied the motion on May 26, 1987. In December 1982, the plaintiff moved for an order to take depositions of witnesses abroad. Final submissions to respondent on that motion were in the same month. Respondent denied the motion on June 2, 1987. In February 1983, a defendant moved for summary judgment. Final submissions to respondent were in March 1983. Respondent denied the motion on May 26, 1987.

9. The plaintiff in Public Administrator of the County of New York v. Frota Oceanica Brasileira S.A. et al. moved in

November 1979 for a protective order and for an order modifying a demand for a bill of particulars. Final submissions to respondent were in January 1980. On May 14, 1987, respondent granted the motion for a protective order and granted in part and denied in part the motion to modify. In February 1981, the plaintiff moved to require the defendants to respond to a discovery demand. Final submissions to respondent were in March 1981. Respondent granted the motion on May 14, 1987. In February 1978, the plaintiff moved for an order requiring disclosure. On May 14, 1987, the motion was granted in part and denied in part.

10. Respondent did not unreasonably delay rendering a decision in Paul Conti and Julie Conti v. Herbert Citrin and Melohn Properties.

11. In 1985, respondent suffered a heart attack. At the end of 1986 and in early 1987, he was hospitalized for about ten days. He had heart bypass surgery later in 1987 and did not return to full-time activity for several months but did some work in the hospital and at home.

12. Respondent's administrative judges spoke to him six to twelve times concerning delays in rendering decisions. In 1987, about 25 cases were removed from respondent's calendar to give him more time to complete decisions in cases that had been delayed.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 100.1, 100.2 and 100.3(a) (5) of the Rules Governing Judicial Conduct and Canons 1, 2 and 3A(5) of the Code of Judicial Conduct. The charge in the Formal Written Complaint is sustained insofar as it is consistent with the findings herein, and respondent's misconduct is established.

As numerous character witnesses attested in this proceeding, respondent has high standing in the legal community as a scholarly, conscientious, hard-working and productive judge who gives great attention to detail. Notwithstanding such praise, respondent's delays of up to nine years in deciding motions and disposing of matters before him were unconscionable. His repeated failure to dispose promptly of the business of his court, prompting Article 78 proceedings to compel decisions in four cases, constitutes misconduct and is cause for public discipline.

The Constitution gives the Commission the obligation to hear complaints as to the "performance of official duties of any judge or justice" and the authority to sanction a judge for "persistent failure to perform his duties...." Article VI, Section 22(a). The Rules Governing Judicial Conduct impose upon judges the ethical duty to "dispose promptly of the business of the court." Section 100.3(a) (5). Although they may also be the proper business of court administrators and the appellate courts,

extensive delays in adjudication are clearly within the jurisdiction of the Commission. Judges have been disciplined for persistent delays in disposing of cases. Matter of Lenney v. State Commission on Judicial Conduct, 71 NY2d 456 (1988); Matter of Leonard, 1986 Annual Report 137 (Com. on Jud. Conduct, Oct. 24, 1985).

As found by the distinguished referee, respondent's delays were unreasonable and inexcusable. Neither his health problems, which began after most of the eight cases had already been on his calendar for years, nor his fear in the Silk & Bunks case that the allegations would undermine the court's reputation and integrity provide ample justification for his failure to dispose of the matters before him.

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

Mrs. Robb, Mr. Berger, Mrs. DelBello, Mr. Kovner, Judge Rubin and Mr. Sheehy concur, except that Mr. Berger, Mr. Kovner and Judge Rubin dissent as to the Silk & Bunks case only and find no misconduct.

Mr. Cleary and Judge Salisbury dissent as to sanction only and vote that respondent be admonished.

Judge Ciparick did not participate.

Judge Altman and Mr. Bower 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: September 28, 1989



Victor A. Kovner, Esq.
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OPINION BY MR. KOVNER
IN WHICH MR. BERGER
AND JUDGE RUBIN JOIN,
DISSENTING IN PART

I respectfully dissent from the finding that the delay
in Silk & Bunks, P.C. v. Stanley Danzig constituted misconduct.

It is uncontroverted that a draft of respondent's
decision was prepared promptly but was not released pending a
resolution of the ongoing settlement discussions conducted at
numerous conferences before respondent with all parties.

While many may differ with respondent's efforts to
obtain a settlement, and especially with his discussion with the
Administrative Judge regarding his stated concern about the
impact of his decision on the reputation and integrity of the
Court, the course of action adopted by respondent during the
settlement discussions was a matter of judicial discretion.
Moreover, respondent was charged solely with delay and not with
impropriety in the procedures he chose to employ in his effort
to bring about an overall resolution to prolix litigation.

Notwithstanding the uncontroverted record of respondent's distinguished service on the bench and at the bar and notwithstanding my view of Silk & Bunks, I must, with reluctance, join in the sanction imposed by the Commission.

Dated: September 28, 1989



Victor A. Kovner, Esq.
New York State
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