

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

RALPH C. MORE,

a Justice of the Milford Town Court,
Otsego County.

THE COMMISSION:

Henry T. Berger, Esq., Chair
Helaine M. Barnett, Esq.
Honorable Evelyn L. Braun
E. Garrett Cleary, Esq.
Mary Ann Crotty
Lawrence S. Goldman, Esq.
Honorable Juanita Bing Newton
Honorable Eugene W. Salisbury
Barry C. Sample
John J. Sheehy, Esq.
Honorable William C. Thompson

APPEARANCES:

Gerald Stern (Cathleen S. Cenci, Of Counsel) for the
Commission

Joseph A. Ermeti for Respondent

The respondent, Ralph C. More, a justice of the Milford Town Court, Otsego County, was served with a Formal Written Complaint dated September 28, 1993, alleging that, in a series of criminal cases, he dismissed charges without notice to the prosecutor and initiated and considered improper ex parte communications. Respondent filed an answer dated November 2, 1993.

By order dated November 12, 1993, the Commission designated Thomas F. Gleason, Esq., as referee to hear and report proposed findings of fact and conclusions of law. A hearing was held on January 24, 1994, and the referee filed his report with the Commission on August 23, 1994.

By motion dated October 25, 1994, the administrator of the Commission moved to confirm in part and disaffirm in part the referee's report, to adopt additional findings and conclusions and for a determination that respondent be censured. Respondent opposed the motion by cross motion on November 17, 1994. The administrator filed a reply dated November 21, 1994. Oral argument was waived.

On January 12, 1995, the Commission considered the record of the proceeding and made the following findings of fact.

As to Charge I of the Formal Written Complaint:

1. Respondent has been a justice of the Milford Town Court during the time herein noted.

2. Without notice and without offering an opportunity to be heard to a prosecuting authority, respondent dismissed:

a) a charge of Failure To Obey A Stop Sign against Janet H. Castro on July 31, 1991;

b) a charge of Trespass against Karen Lambright on February 19, 1992; and,

c) a charge of No Inspection against Gregory Meadows on July 7, 1992.

3. The allegations concerning the cases of Gary Eichler, Claude Ellsworth and Gerard Fritts are not sustained and are, therefore, dismissed.

As to Charge II of the Formal Written Complaint:

4. On July 7, 1992, respondent heard argument in People v Emery L. Labertrandie on the defendant's motion to dismiss. Assistant Public Defender David K. Taylor and Assistant District Attorney Brian Burns argued the motion. About two weeks later, respondent called Mr. Burns by telephone and asked how respondent should rule on the motion. Mr. Burns told respondent that he should grant the motion, based on further research that the prosecutor had done after the argument. Respondent also called upon Mr. Taylor and asked how he should rule. Mr. Taylor suggested that respondent must make that decision. On July 23, 1992, respondent issued a handwritten decision stating, "Dismissed, insufficient evidence."

5. While the Trespass charge against Karen Lambright was pending before him, respondent, on February 11, 1992, called an Otsego County Department of Social Services caseworker, Cindy S. Macomber, and discussed the facts concerning the case that were relayed to her by the complaining witnesses. Ms. Macomber also discussed with respondent the merits of the complaining witnesses' request for an Order of Protection in their favor against Ms. Lambright. Respondent dismissed the case on February 19, 1992.

6. While a charge of Public Lewdness against Richard Stokes was pending in respondent's court, he discussed the merits of the case with someone from the Upstate Home for Children, where the alleged incident occurred, and spoke outside of court with Mr. Taylor, who was representing the defendant. Respondent told Mr. Taylor that he had spoken to someone at the home and did not feel that the case was very strong. With the consent of Mr. Burns, respondent, on November 4, 1992, adjourned the case in contemplation of dismissal.

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(a) and 100.3(a)(4), and Canons 1, 2A and 3A(4) of the Code of Judicial Conduct. Charges I and II of the Formal Written Complaint are sustained insofar as they are consistent with the findings herein, and respondent's misconduct is established.

A judge should rule based only on evidence duly presented in court upon which both parties have had an opportunity to be heard; the judge should neither initiate nor consider ex parte communications concerning any pending or impending matter. (Rules Governing Judicial Conduct, 22 NYCRR 100.3[a][4]; Matter of Curcio, 1984 Ann Report of NY Commn on Jud

Conduct, at 80, 82; Matter of Racicot, 1982 Ann Report of NY Commn on Jud Conduct, at 99, 101; Matter of McCormick, 1994 Ann Report of NY Commn on Jud Conduct, at 84, 85).

Respondent improperly dismissed three cases without according the prosecutor the opportunity to be heard. (See, Matter of Conti v State Commission on Judicial Conduct, 70 NY2d 416; Matter of Reyome, 1988 Ann Report of NY Commn on Jud Conduct, at 207, 209). In one of these and in two additional cases, respondent also initiated and considered ex parte communications on the merits of the issues before him. Even speaking to each attorney separately, as he did in Labertrandie, was improper. (See, Matter of Manning, 1987 Ann Report of NY Commn on Jud Conduct, at 115, 117).

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

Mr. Berger, Ms. Barnett, Judge Braun, Mr. Cleary, Mr. Goldman, Judge Newton, Judge Salisbury, Mr. Sample, Mr. Sheehy and Judge Thompson concur as to sanction.

Mr. Berger and Judge Braun dissent only as to the allegation in Charge I concerning the case of Gary Eichler and vote that that allegation be sustained.

Ms. Crotty was not present.

CERTIFICATION

It is determined 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: March 13, 1995

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