

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

JOHN B. NESBITT,

a Judge of the County, Family and Surrogate
Courts, Wayne 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 (Cathleen S. Cenci, Of Counsel) for the Commission

Mary Katherine Villani for Respondent

The respondent, John B. Nesbitt, a Judge of the County, Family and
Surrogate Courts, Wayne County, was served with a Formal Written Complaint dated

January 4, 2002, containing one charge. Respondent filed an answer dated January 15, 2002.

On May 24, 2002, the Administrator of the Commission, respondent and respondent's counsel entered into an Agreed Statement of Facts pursuant to Judiciary Law §44(5), stipulating that the Commission make its determination based upon the agreed facts, jointly recommending that respondent be admonished and waiving further submissions and oral argument.

On June 20, 2002, the Commission approved the agreed statement and made the following determination.

1. Respondent has been a Judge of the County, Family and Surrogate Courts, Wayne County since January 1, 2001.

2. On or about July 25, 2001, respondent improperly asserted the prestige of his judicial office on behalf of his son by sending a letter on judicial stationery in a judicial envelope to the Finger Lakes Community College Summer School Program Administrator challenging an administrative determination by the Program Administrator concerning respondent's son's participation in the program. The letter challenged the college administrator's findings and asserted that a hearing had to be conducted before the student was expelled. The letter specifically requested the reinstatement of respondent's son "pending hearing and determination of this matter by competent

authority.”

3. Respondent knew that his use of judicial stationery would receive attention and that if the college knew respondent was a judge, the college would refer the matter to its attorney.

4. Respondent now understands that such action on his part inevitably attributes such a letter to his official position as a judge.

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(B), 100.2(C) and 100.4(A)(2) of the Rules Governing Judicial Conduct. Charge I of the Formal Written Complaint is sustained, and respondent’s misconduct is established.

By writing a letter on judicial stationery to a school official challenging an administrative determination concerning respondent’s son, respondent violated well-established ethical standards barring a judge from lending the prestige of judicial office to advance the private interests of the judge or others (Sections 100.2[C] of the Rules Governing Judicial Conduct). As the Court of Appeals stated in Matter of Lonschein v. State Commn on Jud Conduct, 50 NY2d 569, 571-72 (1980):

[N]o judge should ever allow personal relationships to color his conduct or lend the prestige of his office to advance the private interests of others. Members of the judiciary should be acutely aware that any action they take, on or off the bench, must be measured against exacting standards of scrutiny to the end that public perception of the integrity of

the judiciary will be preserved. There must also be a recognition that any actions undertaken in the public sphere reflect, whether designedly or not, upon the prestige of the judiciary. Thus, any communication from a judge to an outside agency on behalf of another, may be perceived as one backed by the power and prestige of judicial office. [Citations omitted.]

Respondent's judicial stationery lent particular clout to his statements that he had reviewed the matter, that he questioned the legal sufficiency of the school's procedures and that the school should consult an attorney. Using the words "Personal and Unofficial" does not diminish the undeniable impact of such a letter, which inevitably invokes the prestige of the judiciary. Respondent has acknowledged that his use of judicial stationery was intended to influence the recipient to give particular attention to his views simply because of respondent's judicial status. It was improper for respondent to inject his judicial status into a private dispute.

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

Mr. Berger, Judge Ciardullo, Mr. Coffey, Mr. Goldman, Judge Luciano, Ms. Moore, 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: June 21, 2002

A handwritten signature in black ink, appearing to read "Henry T. Berger", is written over a solid horizontal line.

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