

CENTER *for* JUDICIAL ACCOUNTABILITY, INC.

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By Fax: 212-949-8864

January 31, 1996

Alan F. Friedberg, Esq.  
New York State Commission on Judicial Conduct  
801 Second Avenue  
New York, New York 10007

Dear Mr. Friedberg:

This letter is written pursuant to your request in my just concluded phone call to you that I put my verbal inquiry for the following information in writing.

Please advise me whether the Administrator makes a recommendation to the Commission as to how it should dispose of each of the complaints it allegedly considers.

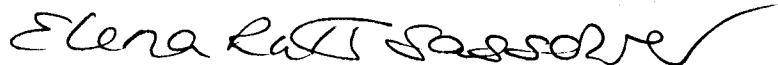
I believe I was told--or read somewhere--that a one-page summary of each complaint is prepared, with a recommendation from the Administrator as to whether investigation should be authorized by the Commission.

Is this correct?

Also, I would appreciate if you would confirm that the enclosed pages, marked 14 through 21, are from the Slavin case--which is what you indicated by phone. I have a copy of the Commission's February 28, 1990 determination in Joseph Slavin's matter and I don't see that it has any relation to the subject matter of pages 14-21.

Also, would you kindly supply me with the coverpage of the document from which the aforesaid pages were photocopied.

Yours for a quality judiciary,



ELENA RUTH SASSOWER, Coordinator  
Center for Judicial Accountability, Inc.

Enclosures

client in. If his client walks around, he don't care; he just doesn't care"; and "Somebody better go tell Mr. Prosnitz I'm sick and tired of this. The only way I'll get this case tried is if his client is in. He won't come in to try these cases. He's always busy with something else, and enough is enough is enough." All of the attacks on Mr. Prosnitz occur within three pages of the transcript.

Respondent then permitted his personal feelings about Mr. Prosnitz to influence his judgment and vented his annoyance by incarcerating the attorney's client, although he had no legal right to do so. (The absence of a defendant's attorney is not a factor in the setting of bail [CPL §510.30].) Whatever respondent's personal feelings about the attorney and his frustrations about the delays in the case, it was surely inappropriate, as respondent has acknowledged, for him to retaliate by punishing the attorney's client. Mr. Mattocks -- who had had an excellent record in making court appearances -- remained in jail for nine days before being released by another judge.

Respondent's act, motivated solely by his annoyance at Mr. Prosnitz, was improper as a matter of law but also constitutes judicial misconduct. The two are not mutually exclusive: a judge is not immune from disciplinary action merely because the judge's conduct also constitutes legal error. Judges have been disciplined when the legal error reflects bias, malice or an intentional disregard of the law, or where the judge has abused his power and disregarded fundamental rights.

In Matter of Sardino, 58 NY2d 286 (1983), the Court of Appeals removed a City Court Judge who had violated the rights of numerous criminal defendants. The Court stated that Judge Sardino had "consistently failed (in 62 cases) to inform the accused of the right to counsel and failed to conduct even a minimal inquiry to determine whether they were entitled to assigned counsel" and "regularly abused his authority with respect to setting bail" (Id. at 289). The Court found that, in setting bail, Judge Sardino had been "acting punitively with little or no interest in the only matter of legitimate concern, namely, whether any bail or the amount fixed was necessary to insure the defendant's future appearances in court (CPL 510.30, subd 2, par [a])" (Id.). The judge also "often ordered defendants to be held without bail for no apparent reason, even in cases where bail was required as a matter of law or the offense charged was of such a minor nature that the defendant could not ordinarily be held in custody to assure his appearance in court" (Id. at 289-90). Such conduct not only was wrong as a matter of law but constituted judicial misconduct warranting a severe sanction. In addition, the judge "assumed an adversarial role at arraignments" by questioning defendants about the crime charged, expressing disbelief when defendants, their attorneys or family members maintained their innocence and displaying "his animosity against the accused by resorting to name-calling and dehumanizing remarks" (Id. at 290).

In Matter of McGee, 59 NY2d 870 (1983), a town justice who engaged in numerous "errors" which violated the rights of defendants was removed from office. The Court of Appeals found that the judge, inter alia, coerced guilty pleas, conducted improper ex parte conferences with arresting officers, failed to advise defendants of their rights and found defendants guilty without a trial or plea of guilty. The Court stated:

We accept the commission's determination that the petitioner has abused the power of his office in a manner that has brought disrepute to the judiciary and has irredeemably damaged public confidence in the integrity of his court. Such a breach of the public trust warrants removal.

Id. at 871

That a judge's "mistakes and errors of law" can constitute judicial misconduct was clearly articulated in Matter of Reeves, 63 NY2d 105 (1984), in which the Court of Appeals removed a Family Court judge who, inter alia, failed to properly advise litigants of their rights, failed to require litigants to submit sworn financial disclosure statements as required by law and entered dispositional orders in cases in which the court lacked jurisdiction over the respondents. The Court specifically rejected Judge Reeves' defense that because his conduct consisted of "mistakes and errors of law" disciplinary action was inappropriate:

Petitioner contends that the failure to notify clients of their rights and purported violations of statutory procedures are

"mistakes and errors of law" which can be corrected on appeal and which fall short of judicial misconduct. A repeated pattern of failing to advise litigants of their constitutional and statutory rights, however, is serious misconduct. (Matter of Sardino v. State Comm. on Judicial Conduct, 58 NY2d 286; see, also Matter of McGee v. State Comm. on Judicial Conduct, 59 NY2d 870).

Id. at 109-10

The Court further stated:

Although these were errors of law, they cannot be excused on that basis. The errors were fundamental and the pattern of repeating them, coupled with an unwillingness to recognize their impropriety, indicate that petitioner poses a threat to the proper administration of justice (see Matter of Aldrich v. State Comm. on Judicial Conduct, 58 NY2d 279; Matter of Shilling, 51 NY2d 397).

Id. at 110-11

The Commission has imposed discipline in numerous other cases where the judge's misconduct also constituted legal error or an abuse of judicial authority. In Matter of Spiehs, 1988 Annual Report 222 (Comm. on Jud. Conduct, Oct. 28, 1987), the Commission admonished a town justice who, inter alia, had allowed a litigant to bring a small claims proceeding for an amount that exceeded the monetary limitation for such cases as provided by Section 1801 of the Uniform Justice Court Act, and did not notify the defendants of the action as required by Section 1801 of the Uniform Justice Court Act. The Commission stated:

In a single case, respondent committed a series of legal and administrative errors which were prejudicial to the parties and the proper administration of justice. Collectively, the record reflects substantial disregard of the law and neglect of official duties, in violation of Sections 100.3(a)(1), 100.3(a)(5) and 100.3(b)(1) of the Rules Governing Judicial Conduct.

Id. at 224

In Matter of Zapf, 1988 Annual Report 251 (Comm. on Jud. Conduct, July 24, 1987), the Commission admonished a town and village justice who sent letters attempting to coerce the payment of debts outside of any legal proceedings, allowed corporations to commence small claims proceedings in his court in violation of Section 1809 of the Uniform Justice Court Act, handled claims against defendants who were outside his jurisdiction and granted default judgments against defendants who had not been properly served with notice of the proceedings. The Commission stated:

Respondent has engaged in a series of legal errors in the filing and disposition of small claims that collectively convey the impression of favoritism toward business interests and prejudice against alleged debtors. Such an appearance of partiality is contrary to the role of a judge. Sections 100.2 and 100.3(a)(1) of the Rules Governing Judicial Conduct.

Id. at 253-54

Even a single instance of an egregious error or abuse of judicial power may lead to public discipline. In Matter of

Wordon, 1981 Annual Report 145 (Comm. on Jud. Conduct, April 1, 1980), a town justice was admonished for threatening to issue an arrest warrant against a person who had stopped payment on a check given to the owners of a hotel in the judge's town. Because of the judge's threat, the alleged debtor paid the hotel bill and, in effect, waived his right to dispute the bill in the judge's court. The Commission concluded that the judge improperly used the power and prestige of his judicial office to settle a civil dispute.

In Matter of Sharpe, 1984 Annual Report 134 (Comm. on Jud. Conduct, June 7, 1983), a Supreme Court justice was admonished for having arbitrarily held a prosecutor in custody because a witness was late for a hearing in a homicide case. The Commission stated that holding the prosecutor responsible for the lateness of the witness was entirely unjustified and a "gross abuse of power" (Id. at 139). In Matter of Maxon, 1986 Annual Report 143 (Comm. on Jud. Conduct, Dec. 17, 1985), a town justice was admonished for having found a defendant guilty of speeding, without a trial, even though the defendant had pled not guilty. In rejecting the defendant's plea of not guilty, the judge expressed his personal knowledge that drivers tended to speed on the road on which the defendant had been given a summons.

In Matter of Mullen, 1987 Annual Report 129 (Comm. on Jud. Conduct, May 22, 1986), a Family Court judge was admonished for having ordered the arrest of a respondent in a support

proceeding based on a rumor that the individual was about to flee the jurisdiction, and having issued a second warrant solely because the judge was displeased with the bail set by a town justice who had arraigned the respondent.

In Matter of Reyome, 1988 Annual Report 207 (Comm. on Jud. Conduct, Dec. 24, 1987), a town justice released a defendant who had been jailed by another judge, did not allow the prosecution the opportunity to be heard, and failed to follow other steps the law requires of a judge in considering bail applications. The sanction of censure was imposed.

As these cases show, a judge who commits "legal error" that may be subject to appellate review may also be subject to discipline by the Commission and the Court of Appeals. It is clear that when judges violate basic legal rights of parties, they have been held accountable in disciplinary proceedings, regardless of whether their actions are reviewable by other judges in the courts.

In the present case, respondent, an experienced jurist, caused a defendant to be incarcerated for nine days because of his pique at an attorney who had failed to appear because of a conflict. Although another judge eventually ordered the defendant to be released, respondent must be held accountable for his improper incarceration of the defendant, the impropriety of which he now acknowledges. Respondent's misconduct is compounded by



the sarcastic and abusive comments concerning defense counsel that he made on the record when he remanded the defendant.

Respondent's conduct violated the ethical provisions cited in the Formal Written Complaint. Respondent failed to observe high standards of conduct in violation of Section 100.1 of the Rules Governing Judicial Conduct and Canon 1 of the Code of Judicial Conduct. By his conduct respondent also failed to avoid impropriety and the appearance of impropriety and failed to respect and comply with the law and to conduct himself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary, and thereby violated Section 100.2 of the Rules Governing Judicial Conduct and Canon 2 of the Code of Judicial Conduct.

By his sarcastic and abusive conduct, respondent failed to be patient, dignified, courteous and considerate to persons with whom he deals in an official capacity and failed to afford every person who is legally interested in a matter or his lawyer a full right to be heard according to law in violation of Section 100.3(a) of the Rules Governing Judicial Conduct and Canon 3A of the Code of Judicial Conduct. Respondent also violated Sections 700.5(a) and 700.5(e) of the Special Rules Concerning Court Decorum of the Appellate Division, Second Department, which require a judge to be the exemplar of dignity and impartiality, and to suppress personal predilections, control his temper and emotions, and otherwise avoid conduct which tends to demean the