

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

J. MICHAEL BRUHN,

a Judge of the Kingston City
Court, Ulster County.

THE COMMISSION:

Mrs. Gene Robb, Chairwoman
John J. Bower, Esq.
David Bromberg, Esq.
Honorable Carmen Beauchamp Ciparick
E. Garrett Cleary, Esq.
Dolores DelBello
Victor A. Kovner, Esq.
Honorable William J. Ostrowski
Honorable Isaac Rubin
Honorable Felice K. Shea
John J. Sheehy, Esq.

APPEARANCES:

Gerald Stern (Stephen F. Downs and Cathleen S. Cenci,
Of Counsel) for the Commission

Cook, Tucker, Netter and Cloonan, P.C. (By Robert E.
Netter) for Respondent

The respondent, J. Michael Bruhn, a judge of the
Kingston City Court, Ulster County, was served with a Formal
Written Complaint dated June 17, 1986, alleging certain
conflicts between his judicial duties and his private practice

of law and that he presided over two cases involving family members. Respondent filed an answer dated July 7, 1986.

By order dated July 11, 1986, the Commission designated Michael M. Kirsch, Esq., as referee to hear and report proposed findings of fact and conclusions of law. A hearing was held on October 29 and 30, 1986, and the referee filed his report with the Commission on February 23, 1987.

By motion dated August 19, 1987, 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 finding that respondent be removed from office. Respondent opposed the motion by cross motion on October 6, 1987. The administrator filed a reply on October 19, 1987.

On October 23, 1987, 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.

As to Charge I of the Formal Written Complaint:

1. Respondent is a judge of the Kingston City Court and has been since January 1, 1982.

2. Respondent is a part-time judge who also practices law in Kingston. From 1974 until January 1, 1985, respondent practiced law in a partnership with Edward T. Feeney. After January 1, 1985, respondent and Mr. Feeney no longer shared

profits but continued to share office space, practice under the name Feeney & Bruhn, maintain a checking account under that name for the holding of escrow funds and otherwise hold themselves out to the public to be partners in the practice of law.

3. Edward T. Feeney is also a judge of the Kingston City Court.

4. Respondent acted as an attorney in seven cases that originated in his court, as set forth in Appendix A hereto, in violation of Section 16 of the Judiciary Law.

5. Respondent acted as an attorney in three cases that had been before him in his official capacity, as set forth in Appendices A and B hereto, in violation of Section 17 of the Judiciary Law and Disciplinary Rule 9-101(A) of the Code of Professional Responsibility.

6. Respondent presided over three cases involving clients or former clients of his law partnership, as set forth in Appendix C hereto.

7. Respondent permitted his law partner to act as attorney in eleven cases that had originated in respondent's court, as set forth in Appendix D hereto, in violation of Section 471 of the Judiciary Law.

As to Charge II of the Formal Written Complaint:

8. On February 14, 1984, John R. Parete was charged with Issuing A Bad Check. The case was returnable in respondent's court.

9. Mr. Parete is respondent's brother-in-law.

10. A criminal summons to Mr. Parete was issued by the court over respondent's signature on April 16, 1984.

11. The case came before respondent on April 30, 1984. Respondent did not disqualify himself, as required by Section 14 of the Judiciary Law.

12. Mr. Parete did not appear. Respondent adjourned the case for one week.

13. On May 7, 1984, Mr. Parete again failed to appear. Respondent again adjourned the matter for a week.

14. Respondent did not issue a warrant for Mr. Parete's arrest to secure his appearance in court, as permitted by Section 130.50 of the Criminal Procedure Law.

15. On February 5, 1986, respondent testified before a member of the Commission that "because of my relationship with Mr. Parete, I just felt he was--it was inappropriate for me to issue a warrant for his arrest." Respondent continued, "I would hope that anybody could understand the situation. It is kind of difficult to issue a warrant of arrest for somebody who is an in-law...."

16. The case was put on Judge Feeney's calendar on July 27, 1984. Again, Mr. Parete did not appear, and the matter was adjourned.

17. On September 4, 1984, after the case had been in his court for nearly seven months, respondent disqualified himself and asked that the case be transferred to another court.

18. In the Spring of 1983, respondent's brother, Robert L. Bruhn, consulted respondent about bringing a claim against his former associates. Respondent advised his brother to file a small claim in respondent's court.

19. Robert Bruhn filed the claim, Bruhn v. Lowe and Edelstein, on April 19, 1983.

20. On May 17, 1983, the court issued a subpoena over respondent's signature for the defendants' records. The subpoena was returnable before respondent on May 24, 1983.

21. After service of the subpoena, the parties agreed out of court to payment of the claim on an incremental basis.

22. Thereafter, Mr. Bruhn requested an adjournment of the May 24, 1983, court date.

23. The case was scheduled on respondent's calendar six times between May 24 and October 18, 1983. Each time, Mr. Bruhn asked for an adjournment after he received an incremental payment from the defendants.

24. Mr. Bruhn advised respondent out of court as to the status of his collection efforts.

25. Although the adjournments were granted by court clerks, respondent was aware of them, and court records indicate that he approved three of them personally.

26. When Mr. Bruhn felt that he had received payment in full, he asked that the matter be discontinued. It was marked off the calendar on October 18, 1983.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 100.1, 100.2, 100.3(a)(1), 100.3(b)(3), 100.3(c)(1), 100.3(c)(1)(i), 100.3(c)(1)(iv), 100.3(c)(2), 100.5(c)(1), 100.5(f) and 100.5(h) of the Rules Governing Judicial Conduct and Canons 1, 2, 3A(1), 3B(3), 3C(1), 3C(1)(a), 3C(1)(d), 3C(2) and 5C(1) of the Code of Judicial Conduct. Charges I and II of the Formal Written Complaint are sustained, and respondent's misconduct is established. Respondent's cross motion is denied.

A part-time judge may practice law, subject to certain restrictions designed to eliminate conflict and the appearance of conflict between the two roles.

Section 16 of the Judiciary Law prohibits a judge from practicing law "in an action, claim, matter, motion or proceeding originating in [his or her] court." Although neither the statute nor case law define the term "originating," we believe its meaning is clear: any claim or charge initiated in

respondent's court, whether or not he took any action on it, originated in his court. In seven cases that originated in his court, respondent violated the statute by later advising or appearing on behalf of a party in another court.

Section 17 of the Judiciary Law further prohibits a judge from acting as an attorney in any matter in which he took official action as a judge. In three of the above-mentioned seven cases, respondent made appearances in other courts after he had taken some judicial action in his own court.

Section 471 of the Judiciary Law prohibits representation by a judge's law partner in any case which originated before the judge. In eleven cases that were initiated in respondent's court, his law partner later represented a party in another court. Respondent's practice of transferring cases out of his court so that his law partner could represent the parties created the impression that the courts were being manipulated to benefit respondent's private law practice, to the possible inconvenience of the parties and to the burden of other courts that had to assume an additional caseload.

As a further restriction on the dual role of a practicing lawyer-judge, ethical standards require disqualification in a proceeding in which a judge's impartiality might reasonably be questioned. Section 100.3(c)(1) of the Rules Governing Judicial Conduct. This prohibits a judge from

taking action in a case involving a business client or former client. Matter of Sims v. State Commission on Judicial Conduct, 61 NY2d 349 (1984); Matter of Filipowicz, 54 AD2d 348, 350 (2d Dept. 1976); Matter of Latremore, 1987 Annual Report 97 (Com. on Jud. Conduct, May 30, 1986); Matter of Sullivan, 1984 Annual Report 152 (Com. on Jud. Conduct, Apr. 22, 1983). Respondent took action in the cases of three clients or former clients of his law firm, including final disposition in two of the cases.

It appears that respondent was unaware of most of these prohibitions. Nonetheless, we find that he failed to comply with the law and failed to take scrupulous care to distinguish his judicial function from his private practice of law.

In addition, respondent's actions in the two cases involving relatives constitute serious misconduct. His admissions with respect to the Parete case illustrate the reasons a judge should immediately disqualify himself from a case involving a close relative. Respondent was simply unable to issue a warrant for the defendant's arrest because the defendant was his brother-in-law. As a result, he allowed the case to languish on his calendar for nearly seven months. Respondent's actions in his brother's case were even more egregious. In effect, he permitted the court to be used to aid his brother's collection efforts. Any judicial action in a

relative's case constitutes misconduct, even those short of final disposition. Matter of Myers, 67 NY2d 550 (1986).

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

Mrs. Robb, Mr. Bower, Mr. Bromberg, Mrs. DelBello, Mr. Kovner, Judge Ostrowski, Judge Rubin, Judge Shea and Mr. Sheehy concur, except that Judge Shea dissents as to that aspect of Charge I in which it is found that it constituted misconduct for respondent to act as an attorney in matters which were initiated in his court but in which he took no action as a judge.

Judge Ciparick and Mr. Cleary dissent as to that aspect of Charge I in which it is found that it constituted misconduct for respondent to act as an attorney in matters which were initiated in his court but in which he took no action as a judge. Judge Ciparick and Mr. Cleary also dissent as to sanction and vote that respondent be admonished.

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: December 24, 1987


Lillemor T. Robb, Chairwoman
New York State
Commission on Judicial Conduct

APPENDIX A

Respondent acted as an attorney in seven cases that originated in his court.

Callejo v. Bigge, a small claims case, was filed in respondent's court on August 1, 1985. Respondent disqualified himself on September 19, 1985. The matter was transferred to the Ulster Town Court on September 20, 1985. Respondent counseled Mr. Bigge out of court as to what he might expect when he appeared on his own behalf in the Ulster Town Court. After judgment was rendered against Mr. Bigge, respondent prepared and filed a notice of appeal on his behalf.

Chazen v. Massa, a small claims case, was filed in respondent's court on July 6, 1984, and was dismissed on October 29, 1984, after neither party appeared. It was refiled on August 28, 1985. Respondent disqualified himself on August 29, 1985. On September 10, 1985, the case was transferred to the Esopus Town Court. Thereafter, respondent appeared in the Esopus Town Court on behalf of Mr. Massa.

In Croswell v. Beacon Federal Savings and Loan, respondent represented the plaintiff and advised him to file this small claim in respondent's court. It was filed on March 1, 1985. Respondent disqualified himself on March 14, 1985, and the case was transferred to the Ulster Town Court on April 1, 1985. Respondent did not appear but submitted an affidavit to the Ulster Town Court arguing his client's position.

Kelderhouse v. Gill, a small claims case, was filed in respondent's court on August 30, 1985. Respondent disqualified himself on September 19, 1985, and the matter was transferred to the Ulster Town Court on September 20, 1985. Thereafter, respondent advised the defendants as to how to proceed in the Ulster Town Court.

Kier v. Massa, a small claims case, was filed in respondent's court on May 15, 1984, after the plaintiff discussed the facts of the case and the nature of his claim in court with respondent, and respondent advised him that he could file the claim. Respondent disqualified himself on May 31, 1984, and the case was transferred to the Ulster Town Court on June 8, 1984. A hearing was held in the Ulster Town Court on November 5, 1984. Respondent represented Mr. Massa and cross-examined Mr. Kier. After judgment for Mr. Kier, respondent's law firm filed a notice of appeal on behalf of Mr. Massa and proposed a settlement to Mr. Kier.

People v. Charles Long, in which the defendant was charged with two counts of Harassment, was returnable in respondent's court on August 9, 1983. Mr. Long did not appear, and respondent issued a warrant for his arrest on August 11, 1983. Respondent disqualified himself on October 17, 1983, and the case was transferred to the Ulster Town Court on October 18, 1983. On December 14, 1983, respondent appeared in the Ulster Town Court on behalf of Mr. Long.

In People v. Lawrence Williams, in which the defendant was charged with Criminal Impersonation, Second Degree, respondent signed an arrest warrant on October 5, 1983. Respondent disqualified himself on October 17, 1983, and the matter was transferred to the Ulster Town Court on October 18, 1983. On October 19, 1983, respondent appeared at Mr. Williams' arraignment in the Ulster Town Court.

APPENDIX B

Respondent acted as an attorney in the following three cases that had been before him in his official capacity, as more fully described in Appendix A hereto:

Kier v. Massa

People v. Charles Long

People v. Lawrence Williams

APPENDIX C

Respondent presided over three cases involving clients or former clients of his law partnership.

In People v. Stanley Perzanowski, respondent arraigned the defendant on October 15, 1985, on charges of Assault, Third Degree, and Harassment, and dismissed the charges on October 21, 1985, notwithstanding that his law firm had represented Mr. Perzanowski on another charge earlier the same year.

In People v. Margaret Syvertsen, respondent signed a warrant on January 8, 1985, for the defendant's arrest on a charge of Issuing A Bad Check. On February 4, 1985, respondent accepted a guilty plea to a reduced charge of Disorderly Conduct and fined Ms. Syvertsen \$25, notwithstanding that she was a former client of his law firm.

In People v. Lawrence Williams, in which the defendant was charged with 33 vehicle and traffic violations, respondent arraigned the defendant on December 14, 1983, and committed him to jail on a charge of Violation Of Parole, notwithstanding that respondent's law firm was then representing Mr. Williams in another court on a charge of Criminal Impersonation, Second Degree.

APPENDIX D

Respondent permitted his law partner to act as attorney in the following eleven cases that had originated in respondent's court:

<u>Defendant</u>	<u>Date</u>	<u>Charge</u>
Dennis Ahearn	1/26/84	Petit Larceny
Dennis Ahearn	2/22/84	Driving While Ability Impaired
William Blair	12/30/84	Driving While Intoxicated Driving With More More Than .10% Blood Alcohol Content Insufficient Lights
John Brady	1/28/85	Driving While Intoxicated No Seat Belt
Charles Long	8/6/83	Harassment (two counts)
Susan Mackey	1/3/85	Failing To Stop At A Stop Sign
Stanley Perzanowski	2/19/85	Driving While Intoxicated
Richard Richards	7/15/84	Driving While Intoxicated Driving With More Than .10% Blood Alcohol Content Leaving The Scene Of An Incident
Margaret Syvertsen	10/3/83	Criminal Mischief

<u>Defendant</u>	<u>Date</u>	<u>Charge</u>
James Van Loan	9/9/84	Driving While Intoxicated Driving With More Than .10% Blood Alcohol Content Speeding Passing A Red Light Unregistered Motor Vehicle Reckless Driving No Insurance No Inspection
Lawrence Williams	10/4/83	Criminal Impersonation