

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 T. FEENEY,

a Special 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

H. Clark Bell for Respondent

The respondent, Edward T. Feeney, 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. Respondent filed an answer dated July 7, 1986.

By order dated August 6, 1986, the Commission designated William V. Maggipinto, Esq., as referee to hear and report proposed findings of fact and conclusions of law. A hearing was held on November 17 and 18, 1986, and the referee filed his report with the Commission on April 17, 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 conclusions of law and for a finding that respondent be removed from office.

Respondent opposed the motion by cross motion on October 7, 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.

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

2. Respondent is a part-time judge who also practices law in Kingston. From 1974 until January 1, 1985, respondent practiced in a partnership with J. Michael Bruhn. After January 1, 1985, respondent and Mr. Bruhn no longer shared the profits of their law practice 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. J. Michael Bruhn is also a judge of the Kingston City Court.

4. Respondent accepted employment as an attorney in twelve cases which had originated in his court before Judge Bruhn, as set forth in the appendix hereto, in violation of Sections 16 and 471 of the Judiciary Law.

5. On August 20, 1984, a complaint was filed in respondent's court against Margaret Syvertsen for Issuing A Bad Check. A criminal summons to Ms. Syvertsen was issued by the court over respondent's signature on October 2, 1984.

6. Respondent had previously represented Ms. Syvertsen in a matrimonial matter and represented her from October 1983 to February 1984 on a charge of Criminal Mischief before the Ulster Town Court.

7. The Bad Check case appeared on respondent's court calendar on October 19, November 9 and November 16, 1984. Respondent failed to disqualify himself.

8. On each of the scheduled court dates, Ms. Syvertsen failed to appear in response to the summons, and respondent adjourned the matter. Respondent did not issue a warrant for her arrest, as permitted by Section 130.50 of the Criminal Procedure Law.

9. Respondent testified in this proceeding that he had "no idea" why he did not issue a warrant for Ms. Syvertsen's arrest.

10. On January 8, 1985, Judge Bruhn issued a warrant for Ms. Syvertsen's arrest. On February 4, 1985, she pled guilty before Judge Bruhn to a reduced charge of Disorderly Conduct and was fined \$25.

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), 100.5(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) and 5C(1) of the Code of Judicial Conduct. The charge in the Formal Written Complaint is sustained, except as it refers to the case of Massa v. Boucher, 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. Section 471 of the Judiciary Law also prohibits the law partner of a judge from accepting employment in any cause which originated before the judge. In twelve cases that originated in the Kingston City Court before Judge Bruhn, respondent violated these statutes by later appearing in other courts on behalf of a party.

This practice of transferring cases out of the court so that respondent could represent a party 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's failure to disqualify himself from the Syvertsen Bad Check case

did not comply with this standard. By leaving the case on his calendar without issuing a warrant for her arrest as permitted by law when she failed to appear, respondent created the appearance that Ms. Syvertsen was being favorably treated because she was a former client of respondent.

Respondent has testified that he 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.

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

Mrs. Robb, Mr. Bower, Mrs. DelBello, Mr. Kovner, Judge Ostrowski, Judge Rubin and Mr. Sheehy concur.

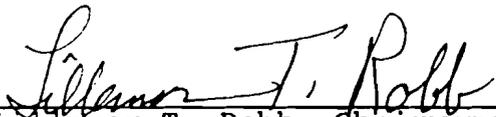
Judge Ciparick, Mr. Cleary and Judge Shea dissent as to that aspect of the charge in which it is found that it was misconduct for respondent to act as an attorney in cases which were initiated in his court but in which he took no action as a judge. Judge Ciparick, Mr. Cleary and Judge Shea also dissent as to sanction and vote that respondent be admonished.

Mr. Bromberg did not participate.

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

Respondent accepted employment as an attorney in the following twelve cases which had originated in his court before Judge Bruhn:

<u>Case</u>	<u>Date</u>	<u>Charge</u>
<u>People v. Dennis Ahearn</u>	1/24/84	Petit Larceny
<u>People v. Dennis Ahearn</u>	2/17/84	Driving While Ability Impaired
<u>People v. William Blair</u>	12/30/84	Driving While Intoxicated Driving With More Than .10% Blood Alcohol Content Insufficient Lights
<u>People v. John Brady</u>	1/28/85	Driving While Intoxicated No Seat Belt
<u>People v. Charles Long</u>	8/06/83	Harassment (two counts)
<u>People v. Susan Mackey</u>	1/03/85	Failure To Stop At A Stop Sign
<u>People v. Stanley Perzanowski</u>	2/19/85	Driving While Intoxicated
<u>People v. Richard Richards</u>	7/15/84	Driving While Intoxicated Driving With More Than .10% Blood Alcohol Content Leaving The Scene Of An Incident
<u>People v. Margaret Syvertsen</u>	10/03/83	Criminal Mischief, Fourth Degree

<u>Case</u>	<u>Date</u>	<u>Charge</u>
<u>People v. James Van Loan</u>	9/09/84	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
<u>People v. Lawrence Williams</u>	10/04/83	Criminal Imperson- ation, Second Degree
<u>Jeffrey Warren v. Mary Ann McCUTCHEON</u>	8/26/85	Small Claims