

**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

CLARENCE F. GILES, JR.,

a Justice of the Clayton Town Court and
Clayton Village Court, Jefferson County.

Determination

THE COMMISSION:

Henry T. Berger, Esq., Chair
Stephen R. Coffey, Esq.
Mary Ann Crotty
Lawrence S. Goldman, Esq.
Honorable Daniel F. Luciano
Honorable Frederick M. Marshall
Honorable Juanita Bing Newton
Alan J. Pope, Esq.
Honorable Eugene W. Salisbury
Barry C. Sample
Honorable William C. Thompson

APPEARANCES:

Gerald Stern (John J. Postel, Of Counsel) for the
Commission

Coulter, Fraser, Bolton, Bird & Ventre (By Robert F.
Coulter) for Respondent

The respondent, Clarence F. Giles, Jr., a justice of the Clayton Town Court and the Clayton Village Court, Jefferson County, was served with a Formal Written Complaint dated October 17, 1995, alleging that he presided in court while under the influence of alcohol. Respondent filed an answer dated December 20, 1995.

By order dated January 9, 1996, the Commission designated Edward S. Spector, Esq., as referee to hear and report proposed findings of fact and conclusions of law. A hearing was held on March 12, 1996, and the referee filed his report with the Commission on August 6, 1996.

By motion dated August 16, 1996, the administrator of the Commission moved to confirm the referee's report and for a determination that respondent be censured. Respondent opposed the motion on September 5, 1996. Oral argument was waived.

On September 12, 1996, the Commission considered the record of the proceeding and made the following findings of fact.

Preliminary findings:

1. Respondent has been a justice of the Clayton Village Court since April 1991 and of the Clayton Town Court since October 1994.

2. In 1994, it was respondent's practice to have two or three "scotch manhattans" before dinner every evening. Each drink contained about three ounces of alcohol. He also had an occasional glass of brandy during the evening. He would sometimes agree to conduct unscheduled, off-hours arraignments in court, even though he had consumed alcohol within the hour.

3. Respondent was aware that it is inappropriate for a judge to preside in court while under the influence of alcohol or with the odor of alcohol on the judge's breath.

4. In the week prior to the hearing in this proceeding, respondent consulted a physician about his alcohol consumption and agreed to a program in which he would not drink when he might be called upon to preside in court. "It means that because I'm on duty 24 hours a day, seven days a week, 365 days a year, that I will completely abstain from the use of alcoholic beverages while I am in the County of Jefferson," respondent testified.

As to Charge I of the Formal Written Complaint:

5. The charge is not sustained and is, therefore, dismissed.

As to Charge II of the Formal Written Complaint:

6. On August 6, 1994, respondent arraigned Timothy L. Odett on charges of Burglary, Second Degree, and Criminal Mischief, Fourth Degree.

7. Also on August 6, 1994, respondent arraigned Timothy A. Underwood, Sr., on a charge of Criminal Trespass, Second Degree.

8. Respondent presided over the off-hours arraignments while he was under the influence of alcohol.

As to Charge III of the Formal Written Complaint:

9. On November 17, 1994, respondent arraigned Jeffrey David on a charge of Criminal Contempt, Second Degree.

Respondent presided over the off-hours arraignment while he was under the influence of alcohol.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated the Rules Governing Judicial Conduct then in effect, 22 NYCRR 100.1, 100.2(a), 100.3(a)(2)*, 100.3(a)(3)** and 100.3(a)(4)***, and Canons 1, 2A, 3A(2), 3A(3) and 3A(4) of the Code of Judicial Conduct. Charges II and III of the Formal Written Complaint are sustained insofar as they are consistent with the findings herein, and respondent's misconduct is established. Charge I is dismissed.

A judge is required to make significant decisions at arraignment concerning bail and to advise defendants of critical rights. Litigants and the public can have little faith in the decisions and judgment of a judge who presides while under the influence of alcohol. (See, Matter of Aldrich v State Commission on Judicial Conduct, 58 NY2d 279).

While serious, respondent's conduct does not warrant removal. (Compare, Matter of Aldrich, supra [judge was intoxicated on one occasion and used vulgar, racial and sexist language and threateningly displayed a knife]; Matter of Wangler,

*Now Section 100.3(B) (2)

**Now Section 100.3(B) (3)

***Now Section 100.3(B) (6)

1985 Ann Report of NY Commn on Jud Conduct, at 241 [judge was intoxicated and belligerent in court and at a meeting with court auditors and failed to promptly deposit and remit court funds]).

Respondent has admitted his misconduct and has promised to abstain from the use of alcohol in the future. In view of these circumstances, staff is hereby authorized to observe periodically respondent's public court sessions after a three-month interval from the date of this decision, and the Commission will consider authorization of a new investigation and additional charges upon any observation that suggests that respondent is presiding while under the influence of alcohol. (See, Matter of Bradigan, 1996 Ann Report of NY Commn on Jud Conduct, at 71, 73). This does not constitute "a contingent or probationary penalty conditioned on treatment...." (Contra, Matter of Aldrich, supra, at 282).

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

Mr. Berger, Mr. Coffey, Ms. Crotty, Mr. Goldman, Judge Luciano, Judge Marshall, Judge Newton, Judge Salisbury and Judge Thompson concur.

Mr. Sample was not present.

Mr. Pope was not a member of the Commission when the vote was taken in this matter.

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: February 4, 1997

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