

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

RICHARD C. HAMM,

a Justice of the Cobleskill Village Court,
Schoharie County.

THE COMMISSION:

Henry T. Berger, Esq., 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

Hiscock & Barclay (By Stephen H. Volkheimer) for Respondent

The respondent, Richard C. Hamm, a Justice of the Cobleskill Village Court, Schoharie County, was served with a Formal Written Complaint dated June 17, 2002, containing one charge. Respondent filed an answer dated July 11, 2002.

On September 5, 2002, the Administrator of the Commission and respondent 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 September 19, 2002, the Commission approved the agreed statement and made the following determination.

1. Respondent has been a Justice of the Cobleskill Village Court, Schoharie County, since 1999. He is not an attorney. He has attended and successfully completed all required training sessions sponsored by the Office of Court Administration.

2. On or about December 18, 2001, the small claims case of Sperbeck v. Brown came before respondent. After the parties agreed that the defendant owed \$200 to the claimant, respondent prepared and had the litigants sign a stipulation of settlement in which respondent included the provision that if payment of \$200 was not made to the claimant by the defendant, Mr. Brown, by December 22, 2001, before 7:00 P.M., “a warrant will be issued for Mr. Brown’s arrest.” Mr. Brown paid the claimant on December 21, 2001.

3. Respondent knew when he prepared the stipulation of settlement that the law did not authorize the arrest of a litigant in a civil suit to enforce a civil settlement. Respondent did not intend to issue a warrant for Mr. Brown’s arrest if Mr. Brown failed

to make the payment, but included the warrant provision in the stipulation of settlement solely to intimidate Mr. Brown so that he would comply with the stipulation.

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 (C) and 100.3(B)(1) of the Rules Governing Judicial Conduct. Charge I of the Formal Written Complaint is sustained, and respondent's misconduct is established.

By threatening a small claims defendant with arrest in order to enforce a civil settlement, respondent abused his judicial power and knowingly flouted the law. *See Matter of Mayville*, 1985 Annual Report 180, 194 (Comm'n on Jud Conduct). Despite knowing that he lacked authority to arrest a civil litigant for non-payment of a settlement, respondent included the warrant provision in a stipulation of settlement, thereby conveying the false impression that non-payment of the settlement was a criminal matter. Respondent has acknowledged that his sole purpose in including the warrant provision was to intimidate the defendant into complying with the settlement. Undeniably, the threat was coercive, and by including it in the stipulation of settlement respondent lent his judicial imprimatur to a threat that he knew was unenforceable.

Public confidence in the integrity and impartiality of the judiciary is essential to the administration of justice. By his conduct, respondent violated his obligation to discharge his judicial duties in a fair and judicious manner and created the appearance that the claimant was in special position to influence him, contrary to Sections

100.2 and 100.3(B)(1) of the Rules Governing Judicial Conduct.

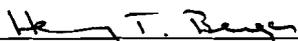
By reason of the foregoing, the Commission determines that the appropriate sanction is admonition.

Mr. Berger, Judge Ciardullo, Mr. Coffey, Mr. Goldman, Ms. Hernandez, Judge Luciano, Ms. Moore, Judge Peters, Mr. Pope and Judge Ruderman concur.

CERTIFICATION

It is certified that the foregoing is the determination of the State Commission on Judicial Conduct.

Dated: October 1, 2002



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