

STATE OF NEW YORK  
COMMISSION ON JUDICIAL CONDUCT

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In the Matter of the Proceeding  
Pursuant to Section 44, subdivision 4,  
of the Judiciary Law in Relation to

DETERMINATION

THOMAS C. KRESSLY,

a Justice of the Urbana Town Court and  
Hammondsport Village Court, Steuben  
County.

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THE COMMISSION:

Lawrence S. Goldman, Esq., Chair  
Honorable Frances A. Ciardullo, Vice Chair  
Stephen R. Coffey, Esq.  
Colleen C. DiPirro  
Richard D. Emery, Esq.  
Raoul Lionel Felder, Esq.  
Christina Hernandez, M.S.W.  
Honorable Daniel F. Luciano  
Honorable Karen K. Peters  
Alan J. Pope, Esq.  
Honorable Terry Jane Ruderman

APPEARANCES:

Robert H. Tembeckjian (John J. Postel, Of Counsel)

Peter J. Degnan for Respondent

The respondent, Thomas C. Kressly, a justice of the Urbana Town Court  
and Hammondsport Village Court, Steuben County, was served with a Formal Written

Complaint dated July 15, 2004, containing one charge. Respondent filed an answer dated October 8, 2004.

On November 17, 2004, the administrator of the Commission, respondent's counsel 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, recommending that respondent be admonished and waiving further submissions and oral argument.

On December 10, 2004, the Commission approved the Agreed Statement of Facts and made the following determination.

1. Respondent has been a justice of the Urbana Town Court, Steuben County since 1996 and the Hammondsport Village Court, Steuben County since 1986. Respondent is not an attorney.

2. On or about August 26, 2003, Marvin Rethmel, the Town of Urbana Code Officer, filed an Information and Supporting Deposition in the Urbana Town Court, charging Lynwood Hough with violating Section 88-6(A) of the Urbana Town Code. The charge alleged that the defendant changed the usage of his property to include boat storage and sales, without prior approval of the town planning board. Section 88-6(A) of the Urbana Town Code provides that violators may be fined or sentenced to jail.

3. Mr. Rethmel served an appearance ticket on the defendant, which scheduled his appearance in the Urbana Town Court for September 8, 2003.

4. The purpose of the September 8<sup>th</sup> appearance was for respondent to

arraign the defendant, advise the defendant of his rights, take the defendant's plea and consider bail. The September 8<sup>th</sup> proceeding was not for the purpose of conducting a trial. No trial notices had been sent to either party.

5. On September 8, 2003, the defendant appeared in court with his attorney, but respondent did not conduct an arraignment. Instead, the defendant pleaded not guilty and requested an immediate trial.

6. Respondent agreed to the request and heard sworn testimony from the defendant and two defense witnesses. The defendant introduced and respondent received into evidence two site plan maps and a site plan checklist.

7. At the conclusion of the defendant's presentation to the court, respondent granted a motion by the defendant's attorney to dismiss the charge.

8. Respondent acknowledges that he held the trial and rendered a decision in *People v. Lynwood Hough* on September 8, 2003, notwithstanding the following:

A. No trial notice had been sent to the town's code enforcement officer or the town attorney.

B. Respondent understood that no representative of the town was present at the proceeding.

C. The town's representatives, as the prosecuting authority, were not provided with an opportunity to present evidence in furtherance of establishing the defendant's alleged violation.

D. The town's representatives were not afforded an opportunity to be

heard in response to the evidence presented by the defendant, including being denied the opportunity to cross-examine the defendant's three witnesses or object to the introduction of the documentary evidence offered by the defendant.

E. No notice of the defendant's motion to dismiss was provided to the town's representatives, and the town's representatives were not afforded an opportunity to be heard on defense counsel's motion to dismiss.

5. Respondent recognizes that he should not have conducted a trial in the *Hough* case without having provided notice to the town representatives so that they could have had an opportunity to be present, to present proof and to rebut the defendant's motion.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 100.1, 100.2(A), 100.3(B)(1), 100.3(B)(6) and 100.3(C)(1) of the Rules Governing Judicial Conduct and should be disciplined for cause, pursuant to Article 6, Section 22, subdivision a, of the New York State Constitution and Section 44, subdivision 1, of the Judiciary Law. Charge I of the Formal Written Complaint is sustained, and respondent's misconduct is established.

A judge is required to accord to all interested parties a full right to be heard under the law (Section 100.3[B][6] of the Rules Governing Judicial Conduct). By conducting a trial and dismissing the charge in a code violation case without notice to the prosecuting authorities and in the absence of any representative of the town, respondent deprived the town of an opportunity to be heard according to law. Such conduct violates

fundamental legal principles and warrants public discipline. *See, Matter of McCall*, 2004 Annual Report 135 (Comm. on Judicial Conduct) (judge commenced a hearing and heard evidence in a small claims case before the defendant's arrival at the scheduled time); *Matter of More*, 1996 Annual Report 99 (Comm. on Judicial Conduct) (judge dismissed charges in three traffic cases without notice to the prosecutor).

In imposing sanction, we have considered that there is no indication in the record that respondent's misconduct was based on favoritism. It appears that respondent, a non-lawyer, may have misunderstood the correct procedures in a code violation case. Respondent's misconduct is limited to a single instance. Accordingly, the sanction of admonition is appropriate.

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

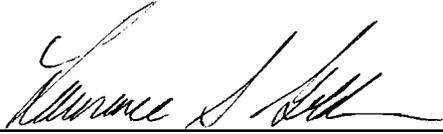
Mr. Goldman, Judge Ciardullo, Ms. DiPirro, Mr. Emery, Mr. Felder, Ms. Hernandez, Judge Luciano, Judge Peters, Mr. Pope and Judge Ruderman concur.

Mr. Coffey was not present.

CERTIFICATION

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

Dated: December 17, 2004



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Lawrence S. Goldman, Esq., Chair  
New York State  
Commission on Judicial Conduct