

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

PETER E. STELLING,

a Justice of the Canaan Town Court,
Columbia County.

DETERMINATION

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

Gerstenzang, O'Hern, Hickey & Gerstenzang (By Peter Gerstenzang)
for Respondent

The respondent, Peter E. Stelling, a Justice of the Canaan Town Court,
Columbia County, was served with a Formal Written Complaint dated June 25, 2002,

containing one charge. Respondent filed an answer dated July 16, 2002.

On August 22, 2002, the Administrator of the Commission, respondent and respondent's counsel 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 censured 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 Canaan Town Court since November 1995. He is not an attorney. He is a former high school teacher and currently works as a Labor Relations Specialist.

2. On March 17, 2002, respondent operated a motor vehicle while intoxicated, for which he was arrested and charged with Driving While Intoxicated. Respondent's blood alcohol content was measured at .15% shortly after his arrest. Respondent was also charged with Moving From Lane Unsafely, in violation of Section 1128A of the Vehicle and Traffic Law.

3. On April 22, 2002, respondent pleaded guilty in the Schodack Town Court to the charge of Driving While Intoxicated, in violation of Section 1192(3) of the Vehicle and Traffic Law, as a result of the March 17, 2002, arrest. He was sentenced to pay a fine and surcharge, and his driver's license was revoked for six months.

4. Respondent had a prior alcohol-related conviction. In December 1994, prior to the time he became a judge, respondent was arrested for Driving While Intoxicated, and in April 1995 he pleaded guilty in the New Lebanon Town Court to Driving While Ability Impaired By Alcohol, in violation of Section 1192(1) of the Vehicle and Traffic Law, as a result.

5. Following his April 22, 2002, conviction, respondent entered into a course of alcohol treatment and affirms to the Commission that he has abstained from the use of alcoholic beverages.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 100.1 and 100.2(A) of the Rules Governing Judicial Conduct. Charge I of the Formal Written Complaint is sustained, and respondent's misconduct is established.

A judge who operates a motor vehicle while his or her ability is impaired by alcohol violates the law and endangers public safety. Matter of Henderson, 1995 Annual Report 118 (Comm'n on Jud Conduct). Respondent's failure to abide by the laws that he is called upon to apply in court undermines his effectiveness as a judge.

In such cases, the Commission has always considered mitigating and/or aggravating circumstances in determining an appropriate disposition. Factors to be considered may include the level of intoxication, whether the judge's conduct caused an accident or injury, whether the conduct was an isolated instance or part of a pattern, the

conduct of the judge after arrest, and the need and willingness of the judge to seek treatment. *See, e.g., Matter of Siebert*, 1994 Annual Report 103 (Commn on Jud Conduct) (judge was convicted of Driving While Ability Impaired after causing a three-car accident [admonition]); *Matter of Henderson, supra* (judge was convicted of Driving While Intoxicated, identified himself as a judge and asked, “Isn’t there anything we can do?” [admonition]); *Matter of Quinn v. Commn on Jud Conduct*, 54 NY2d 386 (1981) (judge was convicted of Driving With More Than .10% Blood Alcohol after a series of alcohol-related incidents, asserted his judicial office and was abusive and uncooperative during his arrest [sanction was reduced from removal to censure in view of the judge’s retirement]).

In the instant case, the seriousness of the misconduct is exacerbated because respondent, who was convicted of Driving While Intoxicated, had an alcohol-related offense eight years earlier. We note, in mitigation, that there is no indication of other aggravating factors and that following his recent conviction, respondent entered into a course of alcohol treatment and affirms that he has abstained from the consumption of alcoholic beverages.

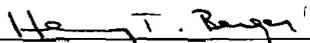
By reason of the foregoing, the Commission determines that the appropriate sanction is censure.

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