

**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**

**STUART L. AIN,**

a Judge of the County Court and Acting  
Supreme Court Justice, 10th Judicial  
District, Nassau County.

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**THE COMMISSION:**

Henry T. Berger, Esq., Chair  
Honorable Myriam J. Altman  
Helaine M. Barnett, Esq.  
Herbert L. Bellamy, Sr.  
Honorable Carmen Beauchamp Ciparick  
E. Garrett Cleary, Esq.  
Dolores Del Bello  
Lawrence S. Goldman, Esq.  
Honorable Eugene W. Salisbury  
John J. Sheehy, Esq.  
Honorable William C. Thompson

**APPEARANCES:**

Gerald Stern (Alan W. Friedberg, Of Counsel) for the  
Commission

Kenneth J. Weinstein for Respondent

The respondent, Stuart L. Ain, a judge of the County  
Court, Nassau County, was served with a Formal Written Complaint  
dated February 6, 1991, alleging that he made improper comments  
to an attorney of Arabic ancestry. Respondent filed an answer  
dated March 13, 1991.

By motion dated March 14, 1991, respondent moved to dismiss the Formal Written Complaint. The administrator of the Commission opposed the motion and cross-moved on March 27, 1991, to compel a responsive answer. Respondent opposed the cross motion by affirmation dated April 3, 1991. By determination and order of April 12, 1991, the Commission denied respondent's motion to dismiss and the administrator's cross motion.

Also on April 12, 1991, the Commission designated Nicholas Scopetta, Esq., as referee to hear and report proposed findings of fact and conclusions of law. A hearing was held on May 31, June 3 and September 5, 1991, and the referee filed his report with the Commission on March 6, 1992.

By motion dated April 13, 1992, the administrator moved to confirm the referee's report and for a determination that respondent be censured. Respondent opposed the motion by cross motion dated June 12, 1992. The administrator filed a reply dated June 25, 1992.

On July 23, 1992, 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 has been a judge of the Nassau County Court since January 1, 1983. He has also served by designation as an acting justice of the Supreme Court, 10th Judicial District, since 1985.

2. On October 2, 1990, respondent was assigned to the case of Carpe v. Modica, a non-jury trial in Supreme Court. Before the trial, he held an off-the-record conference in a robing room. The plaintiff was represented by Martin Bodian, Esq.; the defendant was represented by Paul Saqqal, Esq.

3. Respondent asked the attorneys to state their names. When Mr. Saqqal gave and spelled his name, respondent said, "You're not an Arab, are you?"

4. Mr. Saqqal said that he was of Arab ancestry, and respondent replied, "You're our sworn enemies."

5. Mr. Saqqal responded that he was of Christian Arab ancestry. Respondent said that it didn't matter that Mr. Saqqal was from Lebanon and repeated, "You're still our enemies, and here's what I have to say to you," extending the middle finger of his right hand at Mr. Saqqal.

6. "What the fuck do you people want, anyway?" respondent then asked Mr. Saqqal.

7. Respondent again extended the middle finger of his right hand at Mr. Saqqal and asked, "You know what this is, don't you?"

8. Respondent then asked Mr. Bodian whether he is Jewish and whether he knew Ariel Sharon. Respondent said that he had had the pleasure of being seated with General Sharon at a

synagogue function and that he admired the Israeli general for his hawkish views toward Arabs. Respondent also expressed admiration for Israel and referred to the "Yom Kippur War" and Egypt.

9. Later in the day, respondent presided over the trial of the case. He subsequently rendered a decision which did not award damages to either party. There is no indication that respondent's decision is based on anything other than the facts and evidence in the case.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated the Rules Governing Judicial Conduct, 22 NYCRR 100.1, 100.2 and 100.3(a)(3); Canons 1, 2 and 3A(3) of the Code of Judicial Conduct, and the Special Rules Concerning Court Decorum of the Appellate Division, Second Department, 22 NYCRR 700.5(a) and 700.5(e). The charge in the Formal Written Complaint is sustained, and respondent's misconduct is established.

Respondent's hostile and insulting words and gestures were intemperate, inappropriate and conveyed the impression that he was biased against Mr. Saqqal because of his ethnic background. The appearance of bias was compounded by respondent's favorable remarks about Israel and General Sharon to an attorney whom he knew to be Jewish.

Respondent's defense that his exchange with Mr. Saqqal was meant to be humorous and to put the attorneys at ease lacks credibility. His contention that the remark, "You're our sworn enemies," was a failed attempt at humor or sarcasm is belied by his further actions. Thrusting his middle finger at the attorney and asking, "What the fuck do you people want, anyway," could not be interpreted by any reasonable person as what respondent has described as a "parody". Once Mr. Saqqal stated that he was a Christian, respondent should have been aware that the lawyer was not, nor would he be, amused by these remarks.

Not only did these actions create the appearance of bias but they were intimidating and frightening to the lawyer. That Mr. Saqqal did not immediately object, seek respondent's recusal or complain to the Commission does not undermine his credibility. It speaks only to the superior position of a judge and his ability to intimidate lawyers and litigants whose fate lies in the judge's hands.

A judge must be and appear to be unbiased at all times so that "the public can perceive and continue to rely upon the impartiality of those who have been chosen to pass judgment on legal matters involving their lives, liberty and property." (Matter of Sardino v. State Commission on Judicial Conduct, 58 NY2d 286, 290-91). He or she should maintain the role of a neutral and detached arbiter. (Matter of Wood, 1991 Ann Report of NY Commn on Jud Conduct, at 82, 86).

The law of New York is clear that language by a judge that reflects ethnic bias will not be tolerated. (Matter of Esworthy v. State Commission on Judicial Conduct, 77 NY2d 280, 282; Matter of Bloodgood, 1982 Ann Report of NY Commn on Jud Conduct, at 69; Matter of Cook, 1987 Ann Report of NY Commn on Jud Conduct, at 75).

Respondent's conduct is inexcusable. It involved more than a slip of the tongue; it included a series of biased and abusive statements and actions. His remarks, even though made in an informal conference, went well beyond the standards of acceptable behavior. Each of his actions and statements, on its own, constitutes misconduct. Taken together, they indicate a need for a severe sanction.

However, his conduct occurred on a single occasion in an informal, off-the-record conversation in a robing room. Further, it appears that, however improper his earlier comments were, respondent's conduct at the trial and his judicial determination in no way showed bias toward Mr. Saqqal's client. This persuades us that removal is unwarranted in this case.

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

All concur.

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: September 21, 1992

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