

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

JOHN L. BELL,

a Judge of the Court of Claims.

THE COMMISSION:

Henry T. Berger, Esq., Chair
Helaine M. Barnett, Esq.
E. Garrett Cleary, Esq.
Stephen R. Coffey, Esq.
Mary Ann Crotty
Lawrence S. Goldman, Esq.
Honorable Juanita Bing Newton
Honorable Eugene W. Salisbury
Barry C. Sample
Honorable William C. Thompson

APPEARANCES:

Gerald Stern (Cathleen S. Cenci, Of Counsel) for the
Commission

DeGraff, Foy, Holt-Harris & Mealey (By Kirk M. Lewis)
and Hancock & Estabrook (By Stewart F.
Hancock, Jr.) for Respondent

The respondent, John L. Bell, a judge of the Court of
Claims, was served with a Formal Written Complaint dated
March 23, 1994, alleging that he served as an officer and
director of two corporations organized for profit while sitting
as a full-time judge and that he failed to disclose his interest
in the corporations on ethics forms. Respondent filed an answer
dated August 16, 1994.

On June 23, 1995, 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 on the agreed upon facts, jointly recommending that respondent be admonished and waiving further submissions and oral argument.

On June 29, 1995, the Commission considered the record of the proceeding and made the following determination.

As to Charge I of the Formal Written Complaint:

1. Respondent has been a judge of the Court of Claims since July 15, 1991. Before becoming a full-time judge, he practiced law in Plattsburgh and was a judge of the Plattsburgh City Court for 12 years.

2. In 1975, respondent became a shareholder in Norpco Restaurant, Inc., a close corporation which owned and operated the Butcher Block Restaurant in Plattsburgh. Respondent, Gerald Everleth and Roy Clark each owned 20% of the shares, and David White owned 40%. Mr. White was to operate the restaurant. Respondent was to perform any legal work. The four stockholders of the corporation were its directors. Mr. White was president; Mr. Everleth was vice president; Mr. Clark was treasurer, and respondent was secretary.

3. Beginning in the late 1970s and continuing through early 1992, respondent received payments of \$1,000 per month which were denominated as salary as secretary of the corporation.

In addition, he received year-end bonuses in varying amounts, depending on profits. Respondent's total payments bore no relationship to his services to the corporation. Norpco never declared a dividend.

4. In 1982, Mr. White decided to build another Butcher Block restaurant outside of Albany and invited respondent to participate. Respondent prepared the incorporation papers for Butcher Block of Albany, Inc., and was issued approximately 7% of its stock. Mr. White received the majority of the stock, and Mr. Everleth and Mr. Clark were issued the remaining shares.

5. Respondent was to perform the legal work for Butcher Block of Albany and was elected a director and secretary. This corporation never declared a dividend; annual distributions were made in the form of bonuses.

6. In 1989, Mr. White purchased the Norpco stock of Mr. Everleth and Mr. Clark, leaving Mr. White and respondent as the remaining shareholders, officers and directors. In 1990, Mr. White bought the other shareholders' interests in Butcher Block of Albany, again leaving him and respondent as the only shareholders, officers and directors.

7. In the Fall of 1990, respondent applied for a position as a judge of the Court of Claims. On June 25, 1991, he was nominated by the governor and was sworn in on July 15, 1991.

8. After he became a full-time judge, respondent failed to resign from either corporation and continued to collect his monthly salary as secretary of Norpco. He had no involvement

in the operation of the restaurants, however, and he performed no services for either corporation except as secretary at a shareholders' meeting in March 1992. He continued to receive monthly profit-and-loss statements for both corporations after he became a full-time judge.

9. In late Summer or early Fall of 1991, Mr. White offered to purchase respondent's stock in the two corporations. He presented an offer based on an accounting firm's appraisal of Norpco. Respondent replied that it was inadequate.

10. By letter dated January 27, 1992, to Mr. White, respondent asked for meetings of both corporations. He suggested that a new accounting firm be retained, and he stated that he did not wish to be an officer or director of any corporation with Mr. White.

11. Mr. White then called meetings of both corporations for the purposes of amending the by-laws to eliminate the requirement that directors be shareholders and of accepting respondent's resignation as officer and director.

12. On March 7, 1992, special meetings of both corporations were held. At the Norpco meeting, respondent acted as secretary. He opposed the motion to amend the by-laws but was outvoted by Mr. White. Mr. White acknowledged receipt of respondent's "resignation." Respondent insisted that his letter of January 27 did not constitute a resignation and that he would only resign if he and Mr. White could agree upon a successor. Mr. White then nominated himself and Roy Clark as directors;

respondent nominated two persons other than himself. Mr. White's motion carried.

13. The special meeting of Butcher Block of Albany was then convened. Mr. White made the motion to amend its by-laws; respondent declared that he would not oppose it but would not take any "affirmative steps." Mr. White nominated himself and Mr. Clark as directors. Respondent did not oppose the motion, stating, "You will be doing what you wish to do, anyhow."

14. After respondent received notice of special meetings to vote on a plan to merge the corporations, he brought an Order to Show Cause, on March 13, 1992, and sought to enjoin the meetings and the merger. The meetings were temporarily enjoined but were conducted on August 3, 1992. The merger was purportedly approved on the strength of Mr. White's voting shares.

15. Respondent then brought a second lawsuit against Mr. White and the corporation. He claimed several million dollars in damages for alleged fraud by Mr. White, and he demanded that the merger be annulled. The filing of the lawsuit attracted publicity, in which respondent's status as a judge was mentioned.

16. Respondent received a total of \$24,000 from Norpco in 1991, consisting of \$1,000 per month in salary and a \$12,000 bonus paid in the Fall of 1991.

17. Although respondent was aware that the Rules Governing Judicial Conduct prohibit a full-time judge from being a managing or active participant in a business enterprise organized for profit, he did not resign from the corporations after he took the bench because he believed that, inasmuch as he was not active in either corporation and was not performing any service as secretary, he was not in violation.

As to Charge II of the Formal Written Complaint:

18. On April 14, 1992, respondent filed with the Chief Clerk of the Court of Claims a letter purporting to disclose non-judicial compensation for 1991. The letter does not clearly disclose that he was an officer of Norpco Restaurant, Inc., at the same time that he served as a full-time judge. It conveyed the impression that his \$24,000 in compensation from Norpco was earned prior to his becoming a judge in July 1991.

19. On May 8, 1992, respondent filed with the Ethics Commission for the Unified Court System a financial disclosure statement for 1991, as required by law. Respondent disclosed that he was secretary of Norpco and of Butcher Block of Albany, Inc., but failed to state that he was also a director of the corporations. When the disclosure form was returned to him for clarification of another item, he clarified that item but did not correct the form to indicate that he was a corporate director.

20. On May 11, 1993, respondent filed a financial disclosure statement for 1992. He failed to disclose that, from January 1 to May 7, 1992, he was an officer and director of the two corporations and that he had received payments from Norpco from January through April 1992. On August 5, 1993, respondent filed a corrected financial disclosure statement for 1992; he listed his status as secretary and director of the corporations but did not disclose his compensation.

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(a), 100.5(c)(2) and 100.6(c), and Canons 1, 2A and 5C(2) of the Code of Judicial Conduct. Charges I and II of the Formal Written Complaint are sustained insofar as they are consistent with the findings herein, and respondent's misconduct is established.

"No full-time judge shall be a managing or active participant in any form of business enterprise organized for profit, nor shall he or she serve as an officer, director, trustee, partner, advisory board member or employee of any corporation, company, partnership or other association organized for profit...." (Rules Governing Judicial Conduct, 22 NYCRR 100.5[c][2]).

This language explicitly prohibited respondent from serving as secretary and a director of Norpco Restaurant, Inc., and Butcher Block of Albany, Inc., after he became a full-time judge. The prohibitions against business activity are "straightforward and unequivocal...." (Matter of Bayger, 1984 Ann Report of NY Commn on Jud Conduct, at 62, 66; see also, Matter of Intemann v State Commission on Judicial Conduct, 73 NY2d 580, 581).

A judge must report annually the nature and amount of extra-judicial compensation to the clerk of the court (Rules Governing Judicial Conduct, 22 NYCRR 100.6[c]) and to the Ethics Commission for the Unified Court System (Judiciary Law §211[4]; Rules of the Chief Judge, 22 NYCRR 40.2). Respondent's failure to accurately and fully disclose his role in the corporations and his receipt of substantial income during 1991 and 1992 violated the law and constituted judicial misconduct. (See, Matter of Moynihan v State Commission on Judicial Conduct, 80 NY2d 322, 325; Matter of Katz, 1985 Ann Report of NY Commn on Jud Conduct, at 157, 160-61, 165; Matter of Dier, unreported [Commn on Jud Conduct, July 14, 1995]).

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

Mr. Berger, Mr. Cleary, Ms. Crotty, Mr. Goldman, Judge Newton, Judge Salisbury, Mr. Sample and Judge Thompson concur.

Mr. Coffey did not participate.

Ms. Barnett was not present.

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 22, 1995

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