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

RICHARD D. HUTTNER,

a Justice of the Supreme Court, 2nd Judicial
District, Kings County.

DETERMINATION

- -

THE COMMISSION:

Henry T. Berger, Esq., Chair
Honorable Frederick M. Marshall, Vice Chair
Honorable Frances A. Ciardullo
Stephen R. Coffey, Esq.
Lawrence S. Goldman, Esq.
Christina Hernandez, M.S.W.
Honorable Daniel F. Luciano
Honorable Karen K. Peters
Alan J. Pope, Esq.
Honorable Terry Jane Ruderman

APPEARANCES:

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

Harvey L. Greenberg and Stillman & Friedman (by Paul Shechtman)
for Respondent

The respondent, Richard D. Huttner, a justice of the Supreme Court, 2nd Judicial District, Kings County, was served with a Formal Written Complaint dated July

5, 2001. Respondent filed an answer dated July 25, 2001.

On December 5, 2001, 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 December 20, 2001, the Commission approved the agreed statement and made the following determination.

1. Respondent served as a Family Court Judge from 1979 to 1985 and has served as a Supreme Court Justice since 1986.

2. Respondent has been a resident of the Murray Hill Mews cooperative in New York County since July 1996. From May 19, 1997, until September 25, 2001, respondent served as a member of the cooperative's board of directors and as a vice-president of the cooperative's board of directors.

3. Before becoming a member of the Murray Hill Mews cooperative's board of directors, respondent was aware of Opinion 96-08 of the Office of Court Administration Advisory Committee on Judicial Ethics, which states that a judge may serve as an officer of a cooperative's board of directors, provided such service does not "involve the judge in litigation."

4. Between June 1999 and January 2001, respondent signed five affidavits that were filed in court by the cooperative's attorney in connection with litigation between the Murray Hill Mews cooperative and Rio Restaurant Associates, a commercial tenant of the cooperative.

5. Each of the affidavits referred to above contains legal arguments in which respondent urged the courts presiding over the matter to rule in favor of the Murray Hill Mews cooperative and against Rio Restaurant Associates.

6. Respondent's affidavits are replete with legal conclusions and arguments, including phrases such as "legally unsupported" (Exhibit D, p. 9*), in "violation of every rule regarding the admissibility of settlement documents" (Exhibit D, p. 13), a failure "to meet even a modest threshold of believability" (Exhibit D, p. 14), either "by negligent oversight or as an intentional tactic to mislead this Court" (Exhibit D, p. 16), "insulting and demeaning to this Court" (Exhibit E, p. 3), and "an all-too obvious ploy of diversion by a litigant saddled with a weak set of facts on its side" (Exhibit E, p. 6).

7. The attorneys representing the Murray Hill Mews cooperative in the litigation used respondent's name and referred to his judicial position in correspondence that was sent to the attorneys for Rio Restaurant Associates and to the Supreme Court, New York County. Respondent took no steps to prevent his name and judicial position

* References are to the Exhibits attached to the Agreed Statement of Facts.

from being used in this manner. Copies were sent to each member of the cooperative's board of directors, including respondent, who took no action to disassociate himself or his judicial office from the cooperative's legal position.

8. On March 24, 2000, Andrea L. Roschelle, Esq., an attorney representing the Murray Hill Mews cooperative, sent a letter to Adrian Zuckerman, Esq., an attorney representing Rio Restaurant Associates, in which Ms. Roschelle stated that the cooperative's board of directors had selected respondent as "its representative before the Court during settlement discussions." The letter also stated that respondent had "participated in all aspects of the litigation thus far" and had "submitted all of the Cooperative's affidavits supporting its motions for injunctive relief and summary judgment." Ms. Roschelle sent copies of this letter to all members of the cooperative's board of directors, including respondent.

9. On April 12, 2000, respondent attended a settlement conference held before a Supreme Court, New York County court attorney. Respondent attended as the representative of the Murray Hill Mews cooperative and participated in the conference on behalf of the cooperative. At the conference, the parties did not agree to a settlement. On a previous occasion, the settlement conference had been postponed because of respondent's unavailability.

10. On April 27, 2000, Ms. Roschelle sent a letter to Mr. Zuckerman stating that the Murray Hill Mews cooperative rejected a settlement proposal made by Rio

Restaurant Associates. Ms. Roschelle's letter contained a statement that she would not ask respondent "to take time from his busy court calendar to negotiate with a party who is not serious." Ms. Roschelle sent copies of her letter to then Acting Supreme Court Justice Sherry Klein Heitler, who was presiding over the matter, and to the members of the board of directors of the cooperative, including respondent.

11. Respondent's active involvement in the matter resulted in the recusal of Acting Justice Heitler because her husband had previously appeared as a litigant before respondent in Supreme Court, Kings County, and the subsequent transfer of the matter outside New York City.

12. On or about May 11, 2000, respondent patronized the restaurant operated by Rio Restaurant Associates and briefly mentioned to the manager and assistant manager of the restaurant that the litigation should be settled and could be settled if the tenant were represented by a different law firm. During the discussion, respondent referred to his judicial position and gave the assistant manager of the restaurant a card issued by the Patrolmen's Benevolent Association (PBA) to judges. The card has the word "JUDGE" on a picture of a police badge. The PBA gives such cards in large numbers to judges.

13. In mitigation, and to avoid further conflict between his judicial role and the role of a board member of a cooperative that is presently in litigation, respondent resigned from the Murray Hill Mews cooperative board of directors, effective September

25, 2001, and will play no role in the litigation, either as a witness or representative of the cooperative.

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), 100.4(A)(2) and 100.4(A)(3) of the Rules Governing Judicial Conduct. Charge I of the Formal Written Complaint is sustained, and respondent's misconduct is established.

The ethical rules prohibit a judge from lending the prestige of judicial office to advance private interests and from engaging in extra-judicial activities that are incompatible with judicial office or detract from the dignity of judicial office (Sections 100.2[C], 100.4[A][2] and 100.4[A][3] of the Rules Governing Judicial Conduct).

Respondent's highly visible participation in litigation on behalf of his residential cooperative board clearly violated those standards. As the board's representative, respondent signed affidavits filed in connection with the litigation that were replete with legal arguments and conclusions, and he attended a conference in which he participated in settlement discussions. His role in the discussions was apparently a vital one since the conference had been postponed and rescheduled in order to accommodate him. Such conduct necessarily implicates the prestige of judicial office to advance private interests and is incompatible with judicial office.

Respondent displayed a remarkable insensitivity to his ethical

responsibilities and to the ethical problems created by his actions. Without objection by respondent, the cooperative's attorney underscored respondent's judicial status in connection with the litigation, sending a letter to the defendant's attorney which defended the board's choice of "Judge Richard D. Huttner" as its representative in the settlement discussions and emphasized that respondent has "participated in all aspects of the litigation thus far"; in another letter (a copy of which was sent to the presiding judge in the case), the attorney stated that "Judge Huttner" will not be asked "to take time from his busy court calendar to negotiate with a party who is not serious." Respondent should have recognized that such heavy-handed communications convey the unseemly impression that the cooperative was using his judicial status to advance its position in the litigation. Although copies of these letters were sent to respondent, he admittedly took no steps to prevent his name from being used in this manner. Respondent's involvement in the matter ultimately resulted in the recusal of the judge handling the case and the subsequent transfer of the case outside New York City.

Respondent himself used the trappings of his judicial office in connection with the litigation when, in a conversation with the manager and assistant manager of the restaurant operated by the defendant, he referred to his judicial position while discussing the litigation and gave the assistant manager a PBA card with the word "Judge." Whatever the intent of respondent's gesture, it could reasonably be viewed as an unspoken reminder of his judicial status and its attendant perquisites.

Respondent ignored the sound warnings of the Advisory Committee on Judicial Ethics, which has stated unequivocally in numerous opinions that while a judge may serve as an officer of a residential cooperative, any participation in litigation or in rendering legal advice is strictly prohibited in order to avoid the appearance of impropriety (Adv Op 88-98, 88-119, 95-69, 96-08, 96-28, 98-93). Although fully aware of one pertinent Advisory Opinion, respondent inexplicably persisted in conduct which detracted from the dignity of judicial office.

We note, in mitigation, that respondent has resigned from the cooperative's board of directors and has agreed to play no role in the litigation in the future.

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

Mr. Berger, Judge Ciardullo, Mr. Goldman, Ms. Hernandez, Judge Luciano, Judge Marshall, 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 26, 2001

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