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NEW YORK COURT OF APPEALS CASE COMPILATIONS: IN RE GIBBONS

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IN RE GIBBONS¹

(decided October 10, 2002)

I. SYNOPSIS

In a *per curiam* opinion, the New York Court of Appeals upheld the decision of the State Commission on Judicial Conduct removing the petitioner, the Honorable Kenneth W. Gibbons, from his office of Justice of the Glenville Town Court, Schenectady County, for disclosing to the attorney for a car dealership that he had just signed a search warrant to search the dealership premises for hazardous wastes.² The court held that the petitioner's conduct went beyond "simple careless inattention to the applicable ethical standards," but instead it manifested an "utter disregard for the Canons of Judicial Ethics" warranting his removal from office.³

II. BACKGROUND

On October 31, 2000, the New York State Commission on Judicial Conduct ("Commission") served a Formal Written Complaint, on the petitioner, the Honorable Kenneth W. Gibbons, a Justice of the Glenville Town Court, Schenectady County, containing one charge of judicial misconduct.⁴ The formal charge alleged that after the petitioner signed a search warrant authorizing the Department of Environmental Conservation ("DEC") to search the premises of Capitaland Motors ("Capitaland") car dealership for hazardous wastes, he telephoned the dealership's attorney, Mr. Towne, and informed him of the impending search.⁵

The Commission ordered an evidentiary hearing regarding this allegation of the petitioner's misconduct, and on January 2, 2001, it designated William C. Banks, Esq., as Referee to hear and

1. 98 N.Y.2d 448 (2002).

2. *Id.* at 450.

3. *Id.*

4. See decision of the New York State Commission on Judicial Conduct, at <http://www.scjc.state.ny.us/determinations/G/gibbons.htm> (last visited Sep. 30, 2003).

5. See *Gibbons*, 98 N.Y.2d at 449.

report proposed findings of fact and conclusions of law.⁶ The Referee held a hearing on July 10, 2001, and filed his report with the Commission on September 6, 2001.⁷ In this report, the Referee stated that the petitioner acknowledged that he informed the attorney for the dealership about the impending search warrant, however, he claimed the disclosure was inadvertent.⁸ The petitioner stated that he telephoned the attorney out of anger and disclosed the information because he was "irritated by Capitaland's behavior."⁹

According to petitioner's testimony, on July 25, 2000, at 5:50PM, he signed a search warrant based on the allegations of the presenting officer that "Capitaland permitted an unauthorized hauler to transport and dispose of hazardous substances, particularly ethylene glycol, an antifreeze, from Capitaland's underground storage tanks."¹⁰ The warrant authorized the executing officers to "sample the liquids found in the tanks, to dye-test the drains and to seize documentary evidence pertaining to the transportation or disposal of ethylene glycol and other liquid wastes of Capitaland."¹¹ According to the Referee's report, shortly after the petitioner signed the search warrant, he left the court and used his cell phone to telephone Mr. Towne's law office from his car.¹² The petitioner left a message on Mr. Towne's voice mail, requesting him to call the petitioner back.¹³ When the petitioner arrived home, he telephoned Mr. Towne again, but this time at his home, and left another message on his home voice mail for Mr. Towne to call him back.¹⁴ Mr. Towne, who was on a fishing trip at that time, returned the petitioner's phone calls at approximately 7:50 PM that evening.¹⁵ During their brief conversation, the petitioner informed

6. See decision of the New York State Commission on Judicial Conduct, at <http://www.sjc.state.ny.us/determinations/G/gibbons.htm> (last visited Sep. 30, 2003).

7. *Id.*

8. See *Gibbons*, 98 N.Y.2d at 449.

9. *Id.*

10. See decision of the New York State Commission on Judicial Conduct, at <http://www.sjc.state.ny.us/determinations/G/gibbons.htm> (last visited Sep. 30, 2003).

11. *Id.*

12. *Id.*

13. *Id.*

14. *Id.*

15. *Id.*

Mr. Towne that he had just signed a search warrant authorizing the search of the Capitaland's premises for hazardous wastes, and also told Mr. Towne that he should contact his client "right away" in order "to solve the ethylene glycol problem."¹⁶ Mr. Towne did not inform Capitaland of the impending search; instead, he notified the Commission of the petitioner's conduct.¹⁷ The search warrant was executed as scheduled on the morning of July 27, 2000. The search revealed no hazardous wastes on Capitaland's premises, and as a result no charges were filed against it.¹⁸

The Referee found that petitioner's conduct violated several Rules Governing Judicial Conduct, in particular, 22 NYCRR 100.1 (high standard of conduct), 100.2(A) (impropriety, appearance of impropriety, promoting confidence in integrity of judiciary), 100.3(B)(6) (*ex parte* communication) and 100.3(B)(10) (disclosing non-public information).¹⁹ In addition, the Referee found that petitioner's purpose in disclosing the information was "neither to foil the investigation nor out of his concern over any environmental law violations."²⁰ Rather, he found that the petitioner was frustrated by Capitaland's behavior, particularly because the petitioner had once helped Capitaland obtain a building permit for renovations of its premises.²¹²²

Both parties submitted briefs with regard to the Referee's report, and on December 20, 2001, the Commission held oral arguments.²³ The Commission agreed with the Referee's finding of misconduct and it concluded as a matter of law that petitioner's actions violated Sections 100.1, 100.2(A), 100.2(C), 100.3(B)(6)

16. See decision of the New York State Commission on Judicial Conduct, at <http://www.scjc.state.ny.us/determinations/G/gibbons.htm> (last visited Sep. 30, 2003).

17. *Id.*

18. *Id.*

19. See *Gibbons*, 98 N.Y.2d at 450.

20. *Id.*

21. *Id.*; see also decision of the New York State Commission on Judicial Conduct, at <http://www.scjc.state.ny.us/determinations/G/gibbons.htm> (last visited Sep. 30, 2003).

22. Capitaland is a client of law firm of Kingsley and Towne. Petitioner was employed as an associate in this firm from 1996 until September of 1997. Although he was asked to leave the firm, he left on friendly terms, and continued to refer clients to Mr. Towne. Mr. Towne had also referred clients to the petitioner.

23. See decision of the New York State Commission on Judicial Conduct, at <http://www.scjc.state.ny.us/determinations/G/gibbons.htm> (last visited Sep. 30, 2003).

and 100.3(B)(10) of the Rules Governing Judicial Conduct.²⁴ The Commission found even if the petitioner did not intend to “tip off” Mr. Towne about the impending search warrant, but acted out of anger, the petitioner’s conduct merited removal.²⁵ It stated that the petitioner’s misconduct was “egregious” and “inconsistent with the fair and proper administration of justice.”²⁶ The petitioner’s extraordinary, ex parte communication “jeopardized the integrity of the DEC’s search,” because Capitaland could have concealed the hazardous wastes prior to the execution of the search warrant.²⁷

The Commission did not accept petitioner’s claim that he did not intend to disclose the information to Mr. Towne.²⁸ The petitioner placed not one, but two phone calls to Mr. Towne.²⁹ Moreover, nearly two hours had elapsed between the petitioner’s first phone call to Mr. Towne and their actual conversation.³⁰ Petitioner had plenty of time to reflect and “recognize that he should say nothing whatsoever pertaining to the subject [the search warrant].”³¹ Consequently, he could not claim that the disclosure merely “slipped out,” as he stated at the hearing.³² “His persistence in attempting to contact the attorney, and the opportunity he had for reflection, suggest a determined, deliberate decision to convey the message that was conveyed.”³³ The Commission noted that the petitioner must take full responsibility for his words and his actions.³⁴

The Commission further stated that even if the facts were as the petitioner had testified (i.e., he acted out of anger and frustration and the disclosure merely “slipped out”), such conduct “de-

24. See decision of the New York State Commission on Judicial Conduct, at <http://www.scjc.state.ny.us/determinations/G/gibbons.htm> (last visited Sep. 30, 2003).

25. See *Gibbons*, 98 N.Y.2d at 450.

26. *Id.*; see also decision of the New York State Commission on Judicial Conduct, at <http://www.scjc.state.ny.us/determinations/G/gibbons.htm> (last visited Sep. 30, 2003).

27. See decision of the New York State Commission on Judicial Conduct, at <http://www.scjc.state.ny.us/determinations/G/gibbons.htm> (last visited Sep. 30, 2003).

28. *Id.*

29. *Id.*

30. *Id.*

31. *Id.*

32. *Id.*

33. See decision of the New York State Commission on Judicial Conduct, at <http://www.scjc.state.ny.us/determinations/G/gibbons.htm> (last visited Sep. 30, 2003).

34. *Id.*

picts a judge who lacks judicial temperament and an understanding of his judicial role: he assumed the client's guilt upon reading the search warrant application; he disclosed highly confidential information because he was angry and 'lost control'; and he wanted to tell the attorney to meet with his client immediately to 'solve the problem' which was the subject of the warrant."³⁵ Even if the disclosure of the search warrant information was inadvertent, which the Commission believed it was not, such disclosure was a "serious breach of his [the petitioner's] ethical duties."³⁶

According to the Commission, the petitioner's misconduct was a "perversion of the judicial process" and it "seriously distorted his role as a judge and irredeemably damage[d] public confidence in the integrity of his court."³⁷ It was entirely irrelevant that Mr. Towne did not act on the information received by the petitioner.³⁸ The Commission cited *Matter of Simms v. Comm. on Jud. Conduct*, 61 N.Y.2d 349,356 (1984); *Matter of Steinberg v. Comm. on Jud. Conduct*, 51 N.Y.2d 74,81 (1980); *Matter of Mazzei v. Comm. on Jud. Conduct*, 81 N.Y.2d 568,572 (1993), and stated "[w]hile the extreme sanction of removal 'is not normally to be imposed for poor judgment, even extremely poor judgment,' in this case [petitioner's] misconduct 'transcends poor judgment' and is 'truly egregious'."³⁹ The Commission accepted the Referee's findings and voted unanimously to remove the petitioner from his office.⁴⁰

The petitioner appealed to the New York Court of Appeals. On March 26, 2002, upon consideration by the court of appeals on its own motion, pursuant to NY Constitution, article VI, §22(e) and (g) and Judiciary Law §44(8)(a) and (c), based upon the petitioner's representation that he "will take a voluntary suspension without pay from his duties as Town Justice," the court of appeals suspended the petitioner without pay, pending disposition of his request for review of a determination by the Commission.⁴¹ The

35. See decision of the New York State Commission on Judicial Conduct, at <http://www.scjc.state.ny.us/determinations/G/gibbons.htm> (last visited Sep. 30, 2003).

36. *Id.*

37. *Id.*

38. *Id.*

39. *Id.*

40. *Id.*

41. See *In re Gibbons*, 97 N.Y.2d 745 (2002).

case was argued before the court of appeals on September 11, 2002, and was decided by it on October 10, 2002.⁴²

III. DISCUSSION

In its rather brief decision, the court of appeals agreed with the Commission and accepted its determination that the petitioner be removed from his office.⁴³ The court was seriously concerned about the confidentiality of search warrants in both their issuance and their execution.⁴⁴ By informing Mr. Towne of the impending search, the petitioner committed a "serious breach of trust."⁴⁵ The motive for disclosure was irrelevant, "as judges are not free to violate th[at]e [public] trust, whether motivated by sinister design or by anger."⁴⁶

The court stated that maintaining strict confidentiality with regard to search warrants is of paramount importance for effective law enforcement and fair administration of justice.⁴⁷ The public must have complete trust and "full confidence" that judges will not disclose information regarding judicial matters and proceedings that require confidentiality.⁴⁸ When petitioner informed Mr. Towne of the search warrant, he "jeopardized the very legal system he was duty-bound to protect and administer."⁴⁹ Further agreeing with the Commission, the court held that "his [the petitioner's] conduct goes beyond 'simple careless inattention to the applicable ethical standards' and instead manifests an 'utter disregard for the Canons of Judicial Ethics', which warrants his removal (*Matter of Steinberg*, 51 N.Y.2d 74,81,82)."⁵⁰

It is clear from the court's decision that the court found petitioner's misconduct to be so egregious as to demonstrate that he was no longer fit for judicial service. The court's decision sends a clear message that even the smallest amount of judicial impropriety

42. See *Gibbons*, 98 N.Y.2d at 450.

43. *Id.*

44. *Id.*

45. *Id.*

46. *Id.*

47. *Id.*

48. See *Gibbons*, 98 N.Y.2d at 450.

49. *Id.*

50. *Id.*

regarding strict judicial confidences will not be tolerated. The standard of judicial conduct set by both the Commission and the court of appeals in this case is extremely high, as it must be, and even judges with many years of experience risk removal if they disclose confidential information. It is particularly important to note the Commission's statement that even if the disclosure of the impending search warrant was not intentional, but was done out of anger and frustration, nevertheless, such conduct violated ethical standards as it demonstrated that the judge lacked "judicial temperament and an understanding of his judicial role."⁵¹ New York judges must take maximum precautions to prevent not only intentional, but also inadvertent disclosures of confidential information in order to preserve the public trust in the justice system. Fair administration of justice prohibits disclosure of confidential information by judges.

IV. CONCLUSION

In *In re Gibbons*, the New York Court of Appeals held that a judge who disclosed to the attorney that he had just signed a search warrant for hazardous wastes regarding his client's premises, has committed a "serious breach of trust" and "his conduct goes beyond 'simple careless inattention to the applicable ethical standards' and instead manifests an 'utter disregard for the Canons of Judicial Ethics', which warrants his removal (*Matter of Steinberg*, 51 N.Y.2d 74,81,82)."⁵²

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51. See decision of the New York State Commission on Judicial Conduct, at <http://www.scjc.state.ny.us/determinations/G/gibbons.htm> (last visited Sep. 30, 2003).

52. See *Gibbons*, 98 N.Y.2d at 450.

