

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

SAMUEL C. ALESSI, JR.

Determination

a Judge of the City Court of
Jamestown, Chautauqua County.

BEFORE: Mrs. Gene Robb, Chairwoman
Honorable Fritz W. Alexander, II
David Bromberg, Esq.
E. Garrett Cleary, Esq.
Dolores DelBello
Michael M. Kirsch, Esq.
Victor A. Kovner, Esq.
Carroll L. Wainwright, Jr., Esq.

APPEARANCES:

Gerald Stern (John J. Postel, Of Counsel)
for the Commission

Robert H. Alessi for Respondent

The respondent, Samuel C. Alessi, Jr., a judge of the City Court of Jamestown, Chautauqua County, was served with a Formal Written Complaint dated February 3, 1981, alleging misconduct with respect to respondent's conduct in a 1980 civil matter. Respondent filed an answer dated February 17, 1981.

By order dated March 16, 1981, the Commission designated Saul H. Alderman, Esq., referee to hear and report proposed findings of fact and conclusions of law. The hearing was held on May 21, 1981, and the referee filed his report on July 27, 1981.

By motion dated August 13, 1981, the administrator of the Commission moved to confirm the referee's report and for a determination that respondent be censured. Respondent opposed the motion on August 21, 1981, and moved to dismiss the Formal Written Complaint. The Commission heard oral argument on the motions on September 23, 1981, thereafter considered the record of the proceeding and now makes the following findings of fact.

1. Martin P. Carlson is a real estate broker. G. Jeffrey Weise and Howard Crossley are attorneys who were representing the purchaser and seller in a real property transaction in April and May 1980 involving Mr. Carlson as broker.

2. On May 1, 1980, based upon an oral complaint and request by Mr. Weise and Mr. Crossley, respondent issued a summons directing the appearance "forthwith" of Mr. Carlson. No criminal information, prosecutor's information or formal complaint of any kind had been filed with the court. The summons stated that Mr. Carlson was "wrongfully withholding personal property" belonging to Mr. Weise and Mr. Crossley, "to wit: the keys to the Nichols property". The summons contained no reference to any Penal Law violation and was not issued to obtain the defendant's appearance for the purpose of arraignment. Respondent was aware that the matter related to a civil dispute but issued the summons nonetheless. The issuance of a "forthwith" summons was not respondent's common practice. Moreover, such procedure did not comport with Section 130.10 of the Penal Law, of which respondent had specific knowledge.

3. Prior to issuing the summons, respondent spoke by telephone with Mr. Carlson and attempted without success to persuade him to surrender the key to the property.

4. Upon issuance of the summons, respondent instructed the police to effect Mr. Carlson's appearance forthwith. Thereupon Jamestown Police Officer Gunnard Kindberg served the summons on Mr. Carlson, placed him in custody and escorted him to respondent's chambers. Neither Mr. Weise nor Mr. Crossley were present.

5. Respondent and Mr. Carlson discussed the realty matter privately in respondent's chambers. Respondent did not advise Mr. Carlson of his right to counsel, denied Mr. Carlson's request to have an attorney present, and demanded that Mr. Carlson surrender the key in question. Respondent told Mr. Carlson that his business would be affected adversely if he persisted in his "arrogant" attitude, that he could be charged with possession of stolen property and practicing law without a license, and that he could have problems with his real estate license.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 33.1, 33.2, 33.3(a)(1) and 33.3(a)(4) of the Rules Governing Judicial Conduct and Canons 1, 2 3A(1) and 3A(4) of the Code of Judicial Conduct. Charge I of the Formal Written Complaint is sustained and respondent's misconduct is established.

By attempting to persuade Mr. Carlson in an ex parte telephone conversation to surrender the disputed key, respondent lent the prestige of his office to advance the private interests

of others (Section 33.2[c] of the Rules Governing Judicial Conduct). By thereafter issuing a criminal summons for Mr. Carlson's "forthwith" appearance in a civil matter and having him brought to chambers in police custody, respondent knowingly acted contrary to the relevant provisions of law. By interrogating Mr. Carlson privately and demanding the surrender of the disputed key, by denying Mr. Carlson's request for the presence of an attorney and by failing to advise him of his right to counsel, respondent acted in a manner inconsistent with his obligations to promote public confidence in the integrity and impartiality of the judiciary and to be faithful to the law (Sections 33.2[a] and 33.3[a] of the Rules). By warning Mr. Carlson that his business and livelihood could be affected adversely by a continued refusal to cooperate, respondent appeared to be coercing Mr. Carlson into submission.

Respondent's conduct in this case is a gross abuse of the power and prestige of judicial office. Respondent improperly extended the court's authority and jurisdiction beyond lawful limits and perverted it to advance private interests. Such conduct is cause for discipline. Matter of Perry, 53 AD2d 882 (2d Dept. 1976).

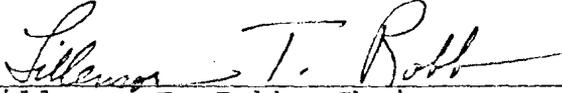
By reason of the foregoing, the Commission determines that the appropriate sanction is censure.

All concur, except Mr. Cleary and Mr. Wainwright dissent with respect to sanction and vote that respondent should be admonished.

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: November 13, 1981


Lillemor T. Robb, Chairwoman
New York State Commission on
Judicial Conduct