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

LUCIEN ALI,

a Justice of the Pompey Town Court, Onondaga County.

THE COMMISSION:

Mrs. Gene Robb, Chairwoman
John J. Bower, Esq.
David Bromberg, Esq.
Honorable Carmen Beauchamp Ciparick
E. Garrett Cleary, Esq.
Dolores DelBello
Victor A. Kovner, Esq.
Honorable William J. Ostrowski
Honorable Isaac Rubin
Honorable Felice K. Shea
John J. Sheehy, Esq.

APPEARANCES:

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

Ali, Driggs, Pappas & Cox, P.C. (By C. Andrew Pappas) for Respondent

The respondent, Lucien Ali, a justice of the Pompey Town Court, Onondaga County, was served with a Formal Written Complaint dated March 18, 1986, alleging that he became involved in a public controversy and used the prestige of his office to

benefit his position in the controversy. Respondent filed an answer dated April 22, 1986.

On September 11, 1986, the administrator of the Commission, respondent and respondent's counsel entered into an agreed statement of facts pursuant to Section 44, subdivision 5, of the Judiciary Law, waiving the hearing provided for in Section 44, subdivision 4, of the Judiciary Law and stipulating that the Commission make its determination based on the pleadings, the agreed upon facts and respondent's testimony before a member of the Commission on September 5, 1985. The Commission approved the agreed statement on September 11, 1986.

The administrator and respondent submitted memoranda as to sanction. Oral argument was waived. On October 16, 1986, the Commission considered the record of the proceeding and made the following findings of fact.

1. Respondent, an attorney, is a part-time justice of the Pompey Town Court and has been since January 1978.

2. In 1981 and 1982, respondent was involved in a public controversy over the proposed construction of a microwave transmission tower on land next to his home. Because of health and environmental concerns, respondent opposed the construction and publicly advocated a moratorium on construction of facilities that would emit non-ionizing electromagnetic radiation.

3. On March 8, 1982, respondent was contacted by the town zoning enforcement officer, Edward DeLuca, who indicated that he had received a complaint that work was being done on a Southern Pacific Communications Company (hereinafter "SPCC") microwave transmission facility and tower in the town.

4. Respondent told Mr. DeLuca that the workers would be in violation of a local law which called for a moratorium until October 20, 1982, on the construction or modification of commercial broadcast or communications facilities emitting non-ionizing electromagnetic radiation and that Mr. DeLuca had the authority to order work stopped.

5. Mr. DeLuca asked respondent to accompany him to the site.

6. At the site, respondent saw three men working on the tower and their supervisor, Frederick Stephan, working in the ground facility.

7. Mr. DeLuca identified respondent as a town justice and told the workers that they must stop work.

8. Mr. Stephan called the project manager, Butros Hanna, by telephone and relayed the direction that work be halted.

9. Respondent spoke with Mr. Hanna. Respondent advised Mr. Hanna of the moratorium law and declared that he could not allow work to continue. Respondent advised Mr. Hanna that the law could be enforced by issuance of an appearance

ticket and could result in a fine. Respondent also said that an order could be obtained from Supreme Court halting the work.

10. Respondent acknowledged in testimony before a member of the Commission on September 5, 1985, that it was improper for him to visit the tower site.

11. On March 10, 1982, respondent contacted Mr. Hanna by telephone and said that he had learned that work was continuing at the tower and that if it was not halted, an appearance ticket would be issued to Mr. Stephan.

12. On March 12, 1982, respondent contacted by telephone another official of the tower facility and requested information concerning the nature of the work being done.

13. On March 30, 1982, SPCC applied to the Pompey Town Zoning Board of Appeals to modify its microwave facility and tower. Respondent attended the meeting and spoke in opposition to the application.

14. After the meeting, respondent told Richard D. Davidson, a Syracuse attorney representing SPCC, and the supervisor of the facility, Keith Kowalski, that he had ordered other company officials not to continue work. Respondent warned Mr. Davidson and Mr. Kowalski that further work would be in violation of the moratorium law and would result in arrest and fines.

15. On April 2, 1982, and April 6, 1982, respondent met with Mr. Davidson to discuss the SPCC application. At both

meetings Mr. Davidson asked respondent to provide him with a written copy of what Mr. Davidson believed to be respondent's oral injunction preventing further work at the facility. Respondent neither acknowledged nor denied that an oral injunction had been issued.

16. At no time during this period was any civil or criminal proceeding involving SPCC before respondent. Respondent has no authority to issue injunctions, under Section 209 of the Uniform Justice Court Act.

17. On April 27, 1982, respondent appeared at a public hearing and questioned an engineer representing SPCC concerning its application to the zoning board.

18. On June 1, 1982, respondent attended a meeting at his law office with Mr. Davidson, the town attorney and the town supervisor. Mr. Davidson presented a proposed "consent order" to be signed by respondent as town justice which would have vacated any "stop-work orders" and agreeing to the tower modifications proposed in the SPCC application.

19. Respondent said that he lacked authority to sign such an order but agreed to revise the stipulation "to make it agreeable" to the town.

20. Respondent acknowledged in testimony before a member of the Commission that he was acting in his capacity as town justice at the June 1, 1982, meeting.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 100.1 and 100.2 of the Rules Governing Judicial Conduct and Canons 1 and 2 of the Code of Judicial Conduct. The charge in the Formal Written Complaint is sustained insofar as it is consistent with the findings of fact enumerated above, and respondent's misconduct is established.

Respondent used the prestige of his judicial office to advance his private interest in protecting his property and his town from what he perceived as the dangers of microwave tower emissions. Respondent's roles as private citizen and judge became so intermingled that his extra-judicial actions took on the appearance of judicial orders. Respondent did little to allay the confusion.

> ...[A] Judge cannot simply cordon off his public role from his private life and assume safely that the former will have no impact upon the latter [citation omitted]. Wherever he travels, a Judge carries the mantle of his esteemed office with him, and, consequently, he must always be sensitive to the fact that members of the public, including some of his friends, will regard his words and actions with heightened deference simply because he is a Judge.
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> Matter of Steinberg v. State Commission on Judicial Conduct, 51 NY2d 74, 81 (1980).

Having been identified as a judge, respondent used the authority of the office to do what he had no power to do since no judicial proceeding was before him and he could not lawfully grant injunctive relief. Respondent told a company official that work must not continue on a microwave tower because the law prohibited it. When the company interpreted this as an oral injunction carrying the weight of a lawful court order, respondent failed to correct the misapprehension.

Such perversion of the court's authority and jurisdiction beyond its legal limits to advance private interests is cause for discipline. Matter of Perry, 53 AD2d 882 (2d Dept. 1976); Matter of Alessi, 2 Commission Determinations 409 (Nov. 13, 1981); Matter of Colf, unreported (Com. on Jud. Conduct, Feb. 26, 1986).

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

Mrs. Robb, Mr. Bower, Judge Ciparick, Mr. Cleary, Mrs. DelBello, Mr. Kovner, Judge Ostrowski and Judge Shea concur.

Mr. Bromberg, Judge Rubin and Mr. Sheehy were 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: November 21, 1986

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