

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

RAYMOND R. BARLAAM,

a Justice of the Ossining Village Court,
Westchester County.

THE COMMISSION:

Henry T. Berger, Esq., Chair
Helaine M. Barnett, Esq.
Honorable Evelyn L. Braun
E. Garrett Cleary, Esq.
Lawrence S. Goldman, Esq.
Honorable Juanita Bing Newton
Honorable Eugene W. Salisbury
John J. Sheehy, Esq.
Honorable William C. Thompson

APPEARANCES:

Gerald Stern (Robert H. Tembeckjian, Of Counsel) for
the Commission

Barnes and Barnes (By Thomas G. Barnes) for Respondent

The respondent, Raymond R. Barlaam, a justice of the
Ossining Village Court, Westchester County, was served with a
Formal Written Complaint dated January 7, 1994, alleging that he
failed to cooperate with a disciplinary committee investigating
his conduct as a lawyer. Respondent did not answer the Formal
Written Complaint.

On February 28, 1994, the administrator of the Commission, respondent and respondent's counsel entered into an agreed statement of facts pursuant to Judiciary Law §44(5), waiving the hearing provided by Judiciary Law §44(4) and stipulating that the Commission make its determination based on the agreed upon facts. The Commission approved the agreed statement by letter dated March 14, 1994.

Both parties submitted papers as to sanction. Oral argument was waived.

On June 9, 1994, the Commission considered the record of the proceeding and made the following determination.

1. Respondent has been a part-time justice of the Ossining Village Court since May 1983. He also practices law and has been admitted in New York since October 1975.

2. In 1987, respondent was retained as an attorney to handle the Estate of Mildred C. Vidmar. Ms. Vidmar died on August 24, 1987, leaving an estate of approximately \$14,000 in U.S. Savings Bonds and a checking account of approximately \$4,000.

3. As of March 1991, respondent had failed to have the will admitted to probate or otherwise finalize the estate.

4. On March 20, 1991, respondent testified in the course of an investigation by the Grievance Committee for the 9th Judicial District concerning his failure to conclude the Vidmar estate. Respondent testified that, in February or March 1989, he

had advised the executor of the estate that the will had not been probated. In fact, respondent had advised the executor that the will had been admitted to probate.

5. On August 2, 1993, respondent was censured by the Appellate Division, Second Department, for misconduct as an attorney in relation to the Vidmar estate.

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 and 100.2, and Canons 1 and 2 of the Code of Judicial Conduct. Charge I of the Formal Written Complaint is sustained, and respondent's misconduct is established.

By giving misleading testimony concerning his statement to the executor of the Vidmar estate, respondent failed to cooperate with the attorney grievance committee. As a lawyer and a judge, respondent is required to cooperate with investigating authorities. (See, Code of Professional Responsibility, DR1-103; Rules Governing Judicial Conduct, 22 NYCRR 100.3[b][3]; Matter of Katz, 1985 Ann Report of NY Commn on Jud Conduct, at 157, 165). His failure to do so before a committee investigating his conduct as a lawyer reflects upon his ability to perform as a judge who is "sworn to uphold the law and seek the truth." (Matter of Myers v State Commission on Judicial Conduct, 67 NY2d 550, 554; see also, Matter of Kelso v State Commission on Judicial Conduct, 61 NY2d 82, 87; Matter of Wray, 1992 Ann Report of NY Commn on Jud Conduct, at 77).

We have considered in mitigation that respondent has acknowledged his misconduct and has been forthright and cooperative in this proceeding. (See, Matter of Rath, 1990 Ann Report of NY Commn on Jud Conduct, at 150, 152). Furthermore, he has been disciplined as an attorney, and "there is no reason to fear that the public will perceive that [respondent] is going unpunished or that the matter is being suppressed," if he is not removed. (Kelso, supra, at 87-88).

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

Mr. Berger, Ms. Barnett, Mr. Cleary, Mr. Goldman, Judge Newton, Judge Salisbury, Mr. Sheehy and Judge Thompson concur.

Judge Braun was not a member of the Commission when the vote was taken in this matter.

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: July 27, 1994

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