

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

ALLAN T. BROWN,

a Justice of the Town Court of
Halfmoon, Saratoga County.

Determination

BEFORE: Mrs. Gene Robb, Chairwoman
Honorable Fritz W. Alexander, II
David Bromberg, Esq.
Dolores DelBello
Michael M. Kirsch, Esq.
William V. Maggipinto, Esq.
Honorable Isaac Rubin
Honorable Felice K. Shea
Carroll L. Wainwright, Jr., Esq.

APPEARANCES:

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

David L. Riebel for Respondent

The respondent, Allan T. Brown, a justice of the Town Court of Halfmoon, Saratoga County, was served with a Formal Written Complaint dated December 20, 1979, alleging that in 1972, he performed a marriage ceremony outside his jurisdiction and failed to take steps to ensure that a valid ceremony was performed. Respondent filed an answer dated January 11, 1980.

The administrator of the Commission, respondent and respondent's attorney entered into an agreed statement of facts on May 9, 1980, pursuant to Section 44, subdivision 5, of the

Judiciary Law, waiving the hearing provided for by Section 44, subdivision 4, of the Judiciary Law and stipulating that the Commission make its determination on the pleadings and the agreed upon facts. The Commission approved the agreed statement of facts and received memoranda from both the administrator and respondent as to whether the facts establish misconduct and, if so, an appropriate sanction. Oral argument was waived.

The Commission considered the record of the proceeding on September 17, 1980, and makes the following findings of fact.

1. On June 18, 1972, respondent gave the appearance of performing a marriage in Albany County for James Mitchell and Sheila Coughlin, for which he received a sum of money from Mr. Mitchell. Respondent knew he was acting outside the territorial jurisdiction of his office and that as such he was not authorized to perform a wedding ceremony in Albany County.

2. Prior to performing the mock ceremony, respondent told Mr. Mitchell and Mr. Mitchell's best man, Peter Enzien, that he was not legally authorized to perform the ceremony and that after the mock ceremony the couple would have to come to Saratoga County for a valid ceremony to be performed. Respondent believed that Ms. Coughlin overheard these remarks and so was aware that the ceremony would not be valid. Respondent did not speak to Ms. Coughlin about this matter.

3. Ms. Coughlin did not know that respondent was unauthorized to perform a wedding in Albany County. Ms. Coughlin believed the ceremony on June 18, 1972, was valid.

4. On two occasions after the mock ceremony, while Mr. Enzien was appearing as an attorney on unrelated matters in respondent's court, respondent asked him when the Mitchells were coming to Saratoga County to have their marriage solemnized. Except for these two conversations, respondent failed to take any steps to ensure that a valid marriage ceremony was performed.

5. On June 22, 1976, James Mitchell died without a valid marriage ceremony having been performed.

6. On several occasions after Mr. Mitchell's death, respondent informed Ms. Coughlin that he had not filed a marriage certificate and could not do so because he had not been authorized to perform a valid marriage in Albany County.

7. After the Commission commenced its investigation of the matter, respondent, on advice of counsel, signed a certificate pursuant to Section 2132 of the Unconsolidated Laws, which had the effect of deeming the marriage solemnized nunc pro tunc.

8. Respondent acknowledges that his conduct was improper in that he should not have performed a wedding ceremony which he was unauthorized to perform.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Canons 1, 2, 3, 4, 5, 32 and 34 of the Canons of Judicial Ethics, Sections 33.1, 33.2(a) and 33.3(a)(1) of the Rules Governing Judicial Conduct and Canons 1, 2 and 3A(1) of the Code of Judicial Conduct. Charge I of the Formal Written Complaint is sustained and respondent's misconduct is established.

The issue in this case is not that respondent performed a ceremonial marriage per se. It is not uncommon for a judge to solemnize a marriage in private in an appropriate jurisdiction and then later officiate at a ceremonial wedding outside his jurisdiction.

In the instant case, respondent officiated at the ceremonial affair in Albany County, knowing the marriage had not already been solemnized and knowing that his jurisdiction did not extend to that county. Furthermore, respondent accepted payment for his services, but he did not take appropriate steps to ensure that the marriage was properly solemnized according to law.

By his conduct, respondent violated the rules and canons noted above, in that inter alia he failed in his obligations to respect, comply with and be faithful to the law and to maintain professional competence in it (Sections 33.2[a] and 33.3[a][1] of the Rules).

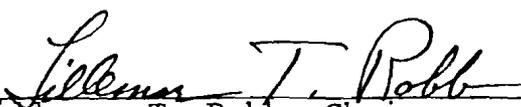
By reason of the foregoing, the Commission determines that the appropriate sanction is admonition.

All concur.

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: December 2, 1980
Albany, New York


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