

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

DONALD X. CLAVIN,

a Judge of the District Court,
Nassau 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.
Honorable Isaac Rubin
Honorable Felice K. Shea
Carroll L. Wainwright, Jr., Esq.

APPEARANCES:

Gerald Stern (Robert H. Straus and Jean Savanyu,
Of Counsel) for the Commission

William E. Turner for Respondent

The respondent, Donald X. Clavin, a judge of the District Court, Nassau County, was served with a Formal Written Complaint dated December 6, 1979, alleging intemperance and other unjudicious demeanor in eight cases in 1976 and 1977. Respondent filed an answer dated February 19, 1980.

By order dated March 18, 1980, the Commission designated Gerald Harris, Esq., referee to hear and report proposed findings of facts and conclusions of law. The hearing commenced on May 2,

1980, and was concluded on February 5, 1981.

By motion dated March 6, 1981, respondent moved to dismiss the Formal Written Complaint. By determination and order dated April 30, 1981, the Commission denied the motion.

The referee filed his report to the Commission on July 6, 1981. By motion dated August 25, 1981, the administrator of the Commission moved to confirm in part and to disaffirm in part the referee's report and for a determination that respondent be censured. Respondent cross-moved on October 5, 1981, to disaffirm in part and to confirm in part the referee's report and to dismiss the Formal Written Complaint. The Commission heard oral argument on the motion on October 22, 1981, thereafter considered the record of this proceeding and made the following findings of fact:

1. From May 4, 1976, through May 12, 1976, respondent presided over the jury trial of People v. Jeffrey Attie. The exchanges from the trial transcript, as set forth in Charge I of the Formal Written Complaint, are accurate, and respondent made the statements attributed to him therein. During the trial respondent:

(a) created the appearance that he was partial to the prosecution and its case;

(b) deprived the defendant, his attorney and witnesses of the opportunity to be heard fully by engaging in conduct which tended to intimidate and threaten them;

(c) unduly projected himself into the trial in a prosecutorial manner;

(d) made statements tending to prejudice the jury against the defendant, his attorney, his witnesses and the merits of his case; and

(e) was impatient with and discourteous to defendant's counsel.

2. On July 12, 1976, respondent presided over the non-jury small claims trial of Fetkowitz v. Tauscher. The exchanges from the trial transcript, as set forth in Charge II of the Formal Written Complaint, are accurate, and respondent made the statements attributed to him therein. During the trial respondent:

(a) was impatient and discourteous toward the defendant;

(b) deprived the defendant of the opportunity to be heard fully by engaging in conduct which tended to intimidate, threaten and harass him; and

(c) disparaged and demeaned the defendant.

3. On June 29, 1977, respondent presided over the non-jury small claims trial of Cepale v. Woods, Walter Kiddie & Co., Inc. The exchanges from the trial transcript, as set forth in Charge IV of the Formal Written Complaint, are accurate, and respondent made the statements attributed to him therein. During the trial respondent:

(a) deprived defendant Eugene Woods of the opportunity to be heard fully by engaging in conduct which tended to intimidate, threaten and harass him; and

(b) disparaged and demeaned
Mr. Woods.

4. On June 29, 1977, respondent conducted an inquest in the small claims matter of Davis v. Jacobson. During the proceeding, respondent made the statement attributed to him in Charge V of the Formal Written Complaint. Respondent:

(a) was impatient, inconsiderate and discourteous toward the plaintiff and

(b) disparaged and demeaned the plaintiff.

5. On June 29, 1977, respondent presided over the non-jury small claims trial of Feinne v. Daljack Co., Inc. The exchanges from the trial transcript, as set forth in Charge VI, subparagraph (c), of the Formal Written Complaint, are accurate, and respondent made the statements attributed to him therein. During the trial respondent disparaged Daniel Itzler, the defendant corporation's representative.

6. On June 29, 1977, respondent presided over the non-jury small claims trial of Bowers v. Mauro. The exchanges from the trial transcript as set forth in Charge VII of the Formal Written Complaint are accurate, and respondent made the statements attributed to him therein. During the trial, respondent's threat to cause a summons to be issued to the defendant constituted improper intimidation.

7. On June 29, 1977, respondent presided over the non-jury small claims trial of Lester v. VIP Sleep Shops, Ltd.

During the trial, respondent made the statement attributed to him in Charge VIII of the Formal Written Complaint and thereby disparaged Nadalynne Aaronson, the defendant corporation's representative.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 33.1, 33.2(a), 33.3(a)(1), 33.3(a)(2), 33.3(a)(3), and 33.3(a)(4) of the Rules Governing Judicial Conduct, Canons 1, 2A, 3A(1), 3A(2), 3A(3) and 3A(4) of the Code of Judicial Conduct and Sections 700.5(a) and (e) of the Rules of the Appellate Division, Second Department. Charges I and II and Charges IV through VIII of the Formal Written Complaint are sustained insofar as they are consistent with the findings of fact herein, and respondent's misconduct is established. Charge III of the Formal Written Complaint is not sustained and therefore is dismissed. Respondent's motion to dismiss the Formal Written Complaint is denied. Respondent's legal arguments have been considered and found to be without merit.

Respondent's demeanor in the cases at issue was impatient, threatening and disparaging of parties in litigation before him. His manner often created the appearance of partiality toward one party or the other and intimidated lawyers, litigants and witnesses.

The deficiencies of the physical plant, the crowded court calendar and the general atmosphere of tension in the small claims part of the District Court may have contributed to but do not excuse respondent's intemperate demeanor. Most people have their

only contact with the legal system in such forums as small claims courts, and their experiences will often form the basis for their views toward the judicial system. It is therefore particularly important for judicial officers in lower courts to act in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

The Commission notes in mitigation that respondent appears to be contrite with respect to his misconduct and that, at the oral argument before the Commission, he expressed an intention to improve his conduct.


By reason of the foregoing, the Commission determines that respondent should be admonished.

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 28, 1981


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