

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

FLOYD W. COLF,

a Justice of the Ashford Town Court,
Cattaraugus County.

THE COMMISSION:

Mrs. Gene Robb, Chairwoman
John J. Bower, Esq.
David Bromberg, Esq.
Honorable Carmen Beauchamp Ciparick
E. Garrett Cleary, Esq.
Dolores Del Bello
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

Weyand and Weyand (By Fredric F. Weyand) for
Respondent

The respondent, Floyd W. Colf, a justice of the
Ashford Town Court, Cattaraugus County, was served with a Formal
Written Complaint dated July 16, 1985, alleging that he issued
an "order" threatening contempt of court based on an ex parte

communication. Respondent answered the Formal Written Complaint by letter of August 19, 1985.

On November 4, 1985, 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 and the agreed upon facts. The Commission approved the agreed statement on November 18, 1985.

The administrator and respondent submitted memoranda as to sanction. Oral argument was waived.

On January 13, 1986, the Commission considered the record of the proceeding and made the following findings of fact.

1. Respondent is a justice of the Ashford Town Court and was during the time herein noted.

2. On September 24, 1984, Linda Wright contacted respondent by telephone and said that she wished to file a complaint alleging Trespass against Diane Wright, the wife of Linda Wright's former husband. The complaint concerned an alleged confrontation between Linda Wright and Diane Wright at Linda Wright's home.

3. Respondent told Linda Wright that he would send Diane Wright a letter, advising her to keep off Linda Wright's property.

4. On October 6, 1984, respondent signed and mailed to Diane Wright a letter stating:

This court has been asked to forbid you from the property of Linda Garlock Wright.... Any action towards Mrs. Wright will be considered a contempt of this order and appropriate action will be taken.

5. At the time respondent issued the "order," no civil or criminal action had been commenced, no trial had been conducted, and no decision had been rendered.

6. Respondent had no authority for issuing the "order" against Diane Wright.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 100.1, 100.2, 100.3(a)(1) and 100.3(a)(4) of the Rules Governing Judicial Conduct and Canons 1, 2, 3A(1) and 3A(4) of the Code of Judicial Conduct. The charge in the Formal Written Complaint is sustained, and respondent's misconduct is established.

Respondent used the prestige of his judicial office to advance the interest of one party to a dispute, notwithstanding that no proceeding was before him and that the other party had

not been heard. In doing so, he violated the law and compromised the impartiality of the judiciary.

Respondent's conduct is similar to that of a judge who, apart from any legal proceedings, writes a threatening letter on behalf of one party to collect a debt. Matter of Wordon, 2 Commission Determinations 139 (Com. on Jud. Conduct, April 1, 1980).

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

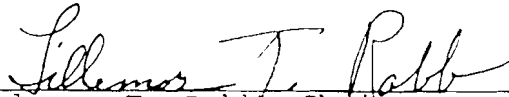
Mrs. Robb, Mr. Bower, Mr. Bromberg, Judge Ciparick, Mr. Cleary, Mrs. DelBello, Mr. Kovner, Judge Ostrowski and Mr. Sheehy concur.

Judge Rubin and Judge Shea 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: February 26, 1986


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