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

CURTIS W. COOK,

Determination

a Justice of the Marshall Town Court, Oneida 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 (Stephen F. Downs and Cathleen S. Cenci, Of Counsel) for the Commission

Woodman and Getman (By William H. Getman) for Respondent

The respondent, Curtis W. Cook, a justice of the Marshall Town Court, Oneida County, was served with a Formal Written Complaint dated July 16, 1986, alleging that he engaged in a course of conduct prejudicial to the administration of justice. Respondent did not answer the Formal Written Complaint.

By motion dated September 19, 1986, the administrator of the Commission moved for summary determination, for a finding that respondent's misconduct be found established and that he be removed from office. Respondent did not oppose the motion or file any papers in response thereto. By determination and order dated October 16, 1986, the Commission granted the administrator's motion and found respondent's misconduct established.

Oral argument as to sanction was waived. On November 14, 1986, the Commission considered the record of the proceeding and made the following findings of fact.

As to Paragraph 4(a) of Charge I of the Formal Written Complaint:

1. Respondent is a justice of the Marshall Town Court and has been since January 1, 1966.

2. Respondent accepted guilty pleas from intoxicated, unrepresented defendants Virginia G. Gustafson on November 27, 1983, Roy T. Walker on April 5, 1985, and Dewey Wratten on September 29, 1982, in violation of Section 170.10 of the Criminal Procedure Law.

As to Paragraph 4(b) of Charge I of the Formal Written Complaint:

3. Respondent presided over and disposed of 24 cases arising outside of his geographic jurisdiction, in violation of Sections 100.55(4), 100.55(5), 120.30(2) and 140.20(1) of the Criminal Procedure Law, as indicated in Schedule A of the Formal Written Complaint.

4. Prior to the disposition of 22 of the 24 cases, respondent had been informed by his supervising judge not to dispose of cases arising outside his jurisdiction.

5. Respondent has no explanation for continuing to dispose of cases over which he had no jurisdiction.

6. Respondent testified before a member of the Commission on February 11, 1986, that "it seems ridiculous that I should get up, spend an hour or two doing someone else's work and then not take jurisdiction of the case; and even rightly or wrongly, apparently that is what I did." Respondent testified that he had never refused to hear a case for lack of jurisdiction because he wanted to "help" the law enforcement agents who brought him cases.

As to Paragraph 4(c) of Charge I of the Formal Written Complaint:

7. Respondent granted reductions to 20 charges involving 18 defendants without the consent of the district

attorney's office, in violation of Sections 180.50, 220.10(3) and 340.20(1) of the Criminal Procedure Law, as indicated in Schedule A of the Formal Written Complaint.

8. Prior to his reduction of 14 of the 20 charges, respondent had been advised by his supervising judge not to reduce charges without the consent of the district attorney's office.

As to Paragraph 4(d) of Charge I of the Formal Written Complaint:

9. On August 18, 1982, Samuel Trevino and Jose Guzman were arrested in the Town of New Hartford and charged with Endangering the Welfare of a Child and Criminal Solicitation, Fourth Degree.

10. On August 19, 1982, Mr. Trevino was arraigned before respondent and was committed to jail in lieu of $1,000 bail.

11. After the arraignment, Patricia Chamberlain, director of the East Utica Community Center, spoke with respondent by telephone on behalf of Mr. Trevino. Respondent said that Mr. Trevino "was not going to get away with it." Respondent added, "These damn Puerto Ricans get away with everything; I know these Puerto Ricans, and he's not getting away with this."

12. On November 2, 1984, Laguana Perry was arrested in the Town of New Hartford and charged with two counts of Petit Larceny, Criminal Possession of Stolen Property, Third Degree, Resisting Arrest and Disorderly Conduct.

13. Ms. Perry was arraigned before respondent.

14. On March 5, 1985, Ms. Perry was given a conditional discharge, and respondent imposed a $40 surcharge to be paid by March 12, 1985.

15. Respondent issued a warrant for Ms. Perry's arrest when she failed to pay the surcharge.

16. Ms. Perry called respondent by telephone when she heard the warrant had been issued.

17. Respondent told Ms. Perry that he was "sick and tired of you colored people coming out in my town. I give you fines, and you don't pay."

18. Ms. Perry was arrested on the warrant on May 24, 1985, and was taken to respondent's court.

19. Respondent repeated that he was "sick and tired of colored people," and said, "If you want to take things, would you stay in your own town?"

20. When Ms. Perry showed respondent a receipt for a money order she had sent to cover the surcharge, respondent asserted that she had probably cashed the money order and spent it.

As to Paragraph 4(e) of Charge I of the Formal Written Complaint:

21. On February 25, 1984, respondent reduced a charge of Aggravated Harassment to Harassment and imposed a $25 fine and a $15 surcharge on Jill Marsh in the absence of Ms. Marsh's attorney, notwithstanding that Ms. Marsh had informed respondent that she was represented by counsel and that her attorney, Joseph Shinder, was en route to the court.

22. On May 24, 1985, respondent sentenced Laguana Perry to ten days in jail for failure to pay a $40 surcharge in the absence of Ms. Perry's attorney, notwithstanding that respondent had been informed that Ms. Perry was represented by counsel and that her attorney was en route to the court.

As to Charge II of the Formal Written Complaint:

23. On February 25, 1984, Jill Marsh appeared before respondent on a charge of Aggravated Harassment.

24. Ms. Marsh told respondent that she was represented by counsel and that she would like to wait for him to appear.

25. Respondent told Ms. Marsh that it did not matter whether she had an attorney and that respondent was going to proceed with the case.

26. Respondent read the charge and asked whether Ms. Marsh had made annoying telephone calls, as alleged.

27. Respondent reduced the charge to Harassment and fined Ms. Marsh $25 plus a $15 surcharge, notwithstanding that Ms. Marsh had not entered a plea to any charge and no trial was held.

28. Ms. Marsh was 18 years old at the time.

29. When Ms. Marsh's attorney, Joseph Shinder, arrived at the court, respondent falsely stated that Ms. Marsh had pled guilty and had not mentioned that she was represented by counsel.

30. On August 1, 1984, respondent issued a warrant for Ms. Marsh's arrest on another charge of Harassment.

31. Ms. Marsh was arrested while she was babysitting and was taken to respondent for arraignment.

32. Respondent read the charge and stated to Ms. Marsh, "You had better find someone to mind the children because you're going to jail."

33. Respondent did not inform Ms. Marsh of her right to counsel, to court-appointed counsel if she could not afford a lawyer, or to an adjourment to obtain counsel, as required by Section 170.10 of the Criminal Procedure Law.

34. Respondent set bail at $1,000, and committed Ms. Marsh to jail in lieu of bail for reappearance in court on August 28, 1984, 27 days later, in violation of Section 30.30(2)(d) of the Criminal Procedure Law.

35. Respondent stated, "You can stay in jail the whole 28 days until your court date, for all I care."

36. Respondent called Ms. Marsh a "troublemaker" and threatened to have her son taken from her custody if she continued to get into trouble.

37. Ms. Marsh was taken to jail and was released several hours later after her father posted bail.

38. Ms. Marsh's stepmother, Mary Ann Marsh, called respondent by telephone after she learned of the arrest. Respondent told Mary Ann Marsh that Jill Marsh was a troublemaker and that if he had his way, she would be placed in a state hospital for the mentally ill.

39. On August 7, 1984, respondent dismissed the charge after the complaining witnesses withdrew their complaint.

40. In releasing Ms. Marsh, respondent warned her, "If you so much as spit on the sidewalk, you're going back to jail."

As to Charge III of the Formal Written Complaint:

41. On November 2, 1984, respondent arraigned Laguana Perry on two counts of Petit Larceny, Criminal Possession of Stolen Property, Third Degree, Resisting Arrest and Disorderly Conduct, nothwithstanding that the offenses charged took place in the non-adjoining Town of New Hartford and respondent did not have jurisdiction to conduct the arraignment pursuant to

Sections 100.55(4) and 140.20(1)(a) of the Criminal Procedure Law.

42. Respondent failed to inform Ms. Perry of her rights and failed to take any steps to effectuate those rights, as required by Section 170.10 of the Criminal Procedure Law.

43. Ms. Perry pled not guilty and was committed to jail in lieu of $1,000 bail.

44. Respondent failed to transfer the case to the New Hartford Town Court, in violation of Section 170.15(1) of the Criminal Procedure Law.

45. On March 5, 1985, Ms. Perry pled guilty to the four charges, was given a conditional discharge and ordered to pay a $40 surcharge. She was represented by an assistant public defender.

46. On May 24, 1985, respondent issued a warrant for Ms. Perry's arrest for failure to pay the surcharge.

47. When she heard that the warrant had been issued, Ms. Perry called respondent by telephone. Respondent made derogatory comments concerning her race.

48. Ms. Perry was arrested and taken to respondent's court.

49. Respondent was informed that Ms. Perry's attorney was on her way to the court, but respondent said that it made no difference and that the attorney could bail Ms. Perry at the county jail.

50. Respondent again made derogatory comments concerning Ms. Perry's race.

51. Respondent sentenced Ms. Perry to ten days in jail, notwithstanding that she produced a receipt for a money order she had purchased to pay the surcharge.

52. Ms. Perry was subsequently released from jail on a Writ of Habeus Corpus issued by the Oneida County Court.

As to Charge IV of the Formal Written Complaint:

53. On February 11, 1986, respondent testified before a member of the Commission in connection with a duly-authorized investigation.

54. Respondent was asked the following questions and gave the following answers:

> Q. Is it your understanding that with respect to misdemeanors that arise outside the Town of Marshall, that you have jurisdiction to preside over only those cases that arise in adjoining towns?
>
> A. I believe that that has been brought up, that they must be contingent towns. But--
>
> Q. Contiguous?
>
> A. Contiguous, I beg your pardon. That's right. However, when the officers--they maybe cannot get a judge to answer, and they have a naked nigger on the

back seat who has been creating problems, and they have to do something with them or something of that kind.

I use that word, not as an ethnic slur, but I saw it happen.

Q. Saw what happen?

A. A naked negro in the back of a car....

55. Also during his testimony on February 11, 1986, respondent was asked the following questions and gave the following answers:

Q. What do you mean by, no one ever stays in jail?

A. I shouldn't say no one. None of the Corn Hill people ever stay in jail for long, somebody always gets them out....

It would seem that I am a--inclined to be--have less than a favorable opinion of colored people, let's say it that way.

Q. Would you like to comment on that?

A. It has been my experience in my years as Judge that they don't pay fines, they're almost impossible to find once they get back into the ghetto; and even for that reason, I many times ROR them or reasonably fine them. I never throw the book at anybody.

But I have learned that if they--once they get away from you, as I say, they always give you the wrong telephone number and many times the wrong address, and when you release

> them, you generally lose them until someone by diligent police work eventually recovers them again, because even the Utica Police Department, they just shake their heads, and you can't find them and they don't know where to find them; and if I release them or give them a time schedule to pay a reasonable fine, it never happens. You have got to get them again....

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), 100.3(a)(3) and 100.3(a)(4) of the Rules Governing Judicial Conduct and Canons 1, 2, 3A(1), 3A(3) and 3A(4) of the Code of Judicial Conduct. Charges I through IV of the Formal Written Complaint are sustained, and respondent's misconduct is established.

Respondent has engaged in a course of conduct prejudicial to the administration of justice. He repeatedly abused his judicial powers and violated the law by presiding over cases over which he had no jurisdiction. Matter of Jutkofsky, unreported (Com. on Jud. Conduct, Dec. 24, 1985). He disregarded well-established, fundamental rights of defendants so as to create an appearance of bias and damage public confidence in the impartiality and integrity of the judiciary.

He failed to afford parties full opportunity to be heard by convicting defendants without a plea or trial in the

absence of counsel and by reducing charges and disposing of cases without consulting the prosecutor.

Such a pattern of misconduct shocks the conscience and indicates that respondent poses a threat to the proper administration of justice. Matter of Sardino v. State Commission on Judicial Conduct, 58 NY2d 286 (1983); Matter of Reeves v. State Commission on Judicial Conduct, 63 NY2d 105 (1984).

Moreover, respondent's racist remarks on and off the bench, standing alone, demonstrate his unfitness for judicial office. Matter of Cerbone v. State Commission on Judicial Conduct, 61 NY2d 93 (1984); Matter of Bloodgood, 2 Commission Determinations 343 (June 11, 1981).

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

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

Mr. Kovner and Judge Rubin 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 19, 1986

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