

**State of New York**  
**Commission on Judicial Conduct**

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In the Matter of the Proceeding Pursuant to Section 44,  
subdivision 4, of the Judiciary Law in Relation to

**Determination**

CHARLES R. COOKSEY,

a Justice of the Farmington Town  
Court, Ontario County.

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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 (Henry S. Stewart, Of Counsel) for the  
Commission

Zimmerman and Tyo (By John E. Tyo) for Respondent

The respondent, Charles R. Cooksey, a justice of the Farmington Town Court, Ontario County, was served with a Formal Written Complaint dated October 23, 1986, alleging that he engaged in an ex parte communication and that he conditioned dismissal of a criminal case on the promise of the defendant to

release the municipality from any claims arising out of his arrest. Respondent filed an answer dated December 2, 1986.

On July 3, 1987, 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 by 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 July 20, 1987.

The administrator submitted a memorandum as to sanction. Respondent did not submit a memorandum and waived oral argument.

On August 28, 1987, the Commission considered the record of the proceeding and made the following findings of fact.

1. Respondent is a justice of the Farmington Town Court and has been since January 1985.

2. On December 5, 1985, Bernard Richardson appeared before respondent on a charge of Trespass. Mr. Richardson was represented by an attorney, Richard E. Chase. Respondent arraigned Mr. Richardson, who pled not guilty. Respondent scheduled a trial for December 12, 1985. The trial was subsequently adjourned to December 19, 1985.

3. On December 19, 1985, Mr. Chase and John G. Herriman, an Ontario County assistant district attorney assigned to prosecute the case, appeared before respondent. Mr. Herriman requested an adjournment so that he might have more time to prepare for trial. Mr. Chase objected and moved to dismiss the case for failure to prosecute.

4. Respondent then declared a recess and asked Mr. Herriman to meet with him in an adjoining room. Mr. Chase objected and asked to be present. Respondent refused to allow Mr. Chase to be present.

5. Respondent and Mr. Herriman then entered an office adjoining the courtroom, and respondent closed the door.

6. Mr. Chase knocked on the door and asked whether he could join them. Respondent again refused to allow Mr. Chase to be present.

7. After approximately five minutes, respondent called Mr. Chase into the room. Mr. Chase again objected to the private conference.

8. Respondent then told Mr. Chase that he would consider dismissing the case if Mr. Richardson would execute a document, releasing Ontario County from any claims arising from his arrest.

9. Mr. Chase refused to provide such a release.

10. Respondent, Mr. Herriman and Mr. Chase then returned to the courtroom. Respondent denied the motion to dismiss and adjourned the trial to January 2, 1986.

11. On December 20, 1985, Mr. Herriman sent respondent a copy of a letter in which Mr. Herriman indicated that the district attorney's office was withdrawing from prosecution of the case.

12. On January 2, 1986, respondent dismissed the case for failure to prosecute.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 100.1, 100.2 and 100.3(a)(4) of the Rules Governing Judicial Conduct and Canons 1, 2 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's ex parte meeting with the prosecutor, notwithstanding repeated requests to be present by defense counsel, was a violation of Section 100.3(a)(4) of the Rules Governing Judicial Conduct. That respondent proposed a disposition immediately after the private meeting makes it obvious that the merits of the case were discussed.

It was also improper for respondent to lend the prestige of his judicial office to advance the prosecutor's

interest in obtaining a waiver of liability from a civil claim. If the case should have been dismissed on its merits, respondent should have dismissed it without attempting to coerce the defendant into foregoing his legal right to pursue a civil claim.

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

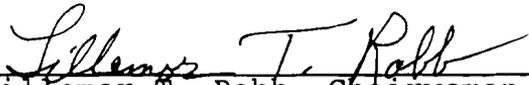
Mrs. Robb, Mr. Bower, Judge Ciparick, Mrs. DelBello, Mr. Kovner, Judge Ostrowski, Judge Rubin, Judge Shea and Mr. Sheehy concur.

Mr. Bromberg and Mr. Cleary 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: October 27, 1987

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