

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

JOSEPH M. DARBY,

a Justice of the Town Court of Ossining,
Westchester County.

THE COMMISSION:

Mrs. Gene Robb, Chairwoman
Honorable Fritz W. Alexander, II
John J. Bower, Esq.
David Bromberg, Esq.
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 (Alan W. Friedberg, Of Counsel)
for the Commission

Barnes and Barnes (By Thomas G. Barnes) for
Respondent

The respondent, Joseph M. Darby, a justice of the
Ossining Town Court, Westchester County, was served with a
Formal Written Complaint dated September 23, 1983, alleging that
he permitted his law partner to appear in his court. Respondent

filed an answer dated October 14, 1983. On January 13, 1984, respondent was served with a second Formal Written Complaint, alleging that he presided over a case in which the defendant was a former client. Respondent answered the second Formal Written Complaint on January 31, 1984.

On March 29, 1984, 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 on the pleadings and the agreed upon facts. The Commission approved the agreed statement on May 10, 1984. Oral argument was waived. On June 21, 1984, the Commission considered the record of the proceeding and made the following findings of fact.

As to Charge I of the Formal Written Complaint dated September 23, 1983:

1. Respondent is a part-time justice of the Ossining Town Court and has been since January 1, 1982. He is also a practicing attorney.

2. On December 10, 1982, respondent received a telephone call at his home. The caller informed respondent that Gerald Navin had been arrested for Driving While Intoxicated.

3. Mr. Navin is a former client of respondent and on December 10, 1982, was employed by a major client of respondent's law firm, Biondo, Darby & Barlaam.

4. Respondent called the Ossining Village Police Department and was referred by the dispatcher to Officer Kenneth Donato of the Ossining Town Police Department who had arrested Mr. Navin.

5. Respondent spoke with Officer Donato and inquired about Mr. Navin's condition. Respondent advised Officer Donato that Mr. Navin was a client of his firm.

6. Officer Donato knew respondent to be an Ossining Town Justice.

7. Officer Donato asserts that he advised respondent that Mr. Navin had called respondent's law partner, Peter Biondo. Respondent asserts that he does not recall whether Officer Donato advised him that Mr. Navin had called Mr. Biondo.

8. On January 17, 1983, Mr. Biondo appeared with Mr. Navin in the Ossining Town Court before the Honorable Edwin S. Shapiro.

9. Respondent asserts that he did not know that Mr. Biondo was appearing in his court, and there is no proof to the contrary.

10. Respondent should have ascertained whether any members of his firm were representing Mr. Navin so that he could have urged them not to practice in his court.

11. Respondent left the firm of Biondo, Darby & Barlaam on November 1, 1983.

As to Charge I of the Formal Written Complaint dated January 13, 1984:

12. On November 18, 1982, respondent presided over People v. John F. Thompson, in which the defendant was charged with Disorderly Conduct.

13. In the absence of a prosecutor and the arresting officer, respondent accepted the defendant's plea of guilty and sentenced him to a conditional discharge and a fine of \$25 to be imposed only if the defendant were arrested on any other criminal matter within three months.

14. Respondent had served as Mr. Thompson's attorney in two motor vehicle matters and one criminal matter in 1980 and 1981. Respondent represented Mr. Thompson at the request of his employer, who was a client of respondent's law firm.

15. Respondent asserts that when Mr. Thompson appeared before him on November 18, 1982, he did not regard Mr. Thompson as a client because he had represented him as a favor to the employer and had never received a fee.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 100.1, 100.2, 100.3(c) and 100.5(f) of the Rules Governing

Judicial Conduct and Canons 1, 2 and 3C of the Code of Judicial Conduct. The charge in the Formal Written Complaint dated September 23, 1983, and the charge in the Formal Written Complaint dated January 13, 1984, are sustained, and respondent's misconduct is established.

A judge's obligation to be and appear fair and impartial in matters before the court is fundamental to public confidence in the administration of justice. Specifically, a judge is prohibited from participating in any case in which his impartiality might reasonably be questioned. Section 100.3(c) of the Rules Governing Judicial Conduct. In addition, a part-time judge who also practices law is obliged to ensure that his law partners and associates do not practice in his court, regardless of who presides. Section 100.5(f) of the Rules.

By his conduct, respondent created the appearance of impropriety in three respects. He telephoned the arresting officer in Navin and, by expressing interest in the case, conveyed the impression that he was in a special position to influence the officer. See, Matter of Montaneli, unreported (Com. on Jud. Conduct, Sept. 10, 1982). He permitted his law partner to practice in respondent's court before another judge. See, Matter of Sullivan, unreported (Com. on Jud. Conduct, April 22, 1983). He presided over a case involving a former client.

See, Matter of Filipowicz, 54 AD2d 348 (2d Dept. 1976); Matter of Sullivan, supra.

Respondent has acknowledged his misconduct and conceded that public sanction is appropriate.

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

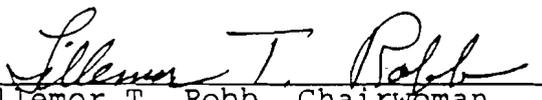
Mrs. Robb, Mr. Bower, Mr. Bromberg, Mr. Cleary, Mrs. DelBello, Mr. Kovner, Judge Ostrowski, Judge Rubin and Judge Shea concur.

Judge Alexander and Mr. Sheehy 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: August 30, 1984


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