

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

ANTHONY J. DE ROSE,

a Judge of the Olean City Court,
Cattaraugus County.

Determination

BEFORE: Mrs. Gene Robb, Chairwoman
Honorable Fritz W. Alexander, II
David Bromberg
Honorable Richard J. Cardamone
Dolores DelBello
Michael M. Kirsch
William V. Maggipinto
Honorable Isaac Rubin
Honorable Felice K. Shea
Carroll L. Wainwright, Jr.

The respondent, Anthony J. DeRose, a judge of the City Court of Olean, Cattaraugus County, was served with a Formal Written Complaint dated August 7, 1978, alleging violations of enumerated ethical standards with respect to his conduct in People v. George K. Leonard, a case over which he presided on January 3, 1978. Respondent filed an answer dated August 31, 1978.

By order dated November 20, 1978, the Commission appointed George M. Zimmermann, Esq., as referee to hear and report with respect to the issues herein. A hearing was held before the referee on January 29, 1979, and his report dated June 18, 1979, was filed with the Commission.

By notice dated August 29, 1979, the administrator of the Commission moved to confirm the referee's findings of fact and to render a determination of censure. Respondent opposed the motion by memorandum filed September 10, 1979. The administrator replied by memorandum dated September 13, 1979. The parties waived oral argument on the motion.

The Commission considered the record in this proceeding on September 27, 1979, and upon that record finds the following facts.

1. Respondent, an attorney, assumed judicial office for the first time on January 1, 1978, upon becoming a judge of the City Court of Olean.

2. Testimony and evidence adduced at the hearing established by a preponderance of the evidence that, prior to assuming the bench, respondent had decided to dismiss the first case over which he would preside.

3. Respondent held court for the first time on January 3, 1978. The only case to come before him was People v. George K. Leonard. The defendant was charged with speeding (a violation), driving while intoxicated ("DWI"-- a misdemeanor) and unlawful possession of marijuana (a misdemeanor).

4. In connection with the Leonard case, respondent had before him

(a) a simplified traffic information and copy of the police blotter in the speeding matter,

(b) a simplified traffic information, a copy of the police blotter and a "breathalyzer" report in the DWI matter and

(c) an information/complaint and a copy of the police blotter in the marijuana matter.

5. At his arraignment, the defendant pled guilty to the speeding and marijuana charges and not guilty to the DWI charge.

6. Respondent told the defendant in open court that he had decided to dismiss the first case he would hear. Respondent thereafter dismissed the charges and told the defendant in open court that he had "hit the jackpot." No trial was held and there was no consent to the dismissal by the prosecutor. In granting this dismissal, respondent did not comply with the requirements of sections 170.40 and 210.45 of the Criminal Procedure Law, which require (i) disclosure on the record by the court of "compelling" circumstances requiring dismissal in the interest of justice and (ii) reasonable written notice to the prosecution to afford it an opportunity to file a response.

7. Respondent thereupon wrote notes on the three police blotters, recording the defendant's pleas to the three charges and noting "Dismissed On Judge's Motion" on each blotter.

8. Respondent subsequently repeated to a newspaper reporter his remark that the defendant had "hit the jackpot".

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) and 33.3(a)(4) of the Rules Governing Judicial Conduct and Canons 1, 2A, 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 therefore established.

Respondent's discretion to dismiss the charges in People v. George K. Leonard, or render any other disposition consistent with law, is not at issue. Respondent's conduct, however, violated the applicable ethical standards cited above. His decision, made in advance, to dismiss the first case to come before him upon his ascending the bench, before he even knew the nature and merits of that case, was improper. In failing to comply with the appropriate sections of the CPL, he violated his duty to "be faithful to the law" and to "accord to every person who is legally interested in a proceeding...full right to be heard according to law..." (sections 33.3[a][1] and [4] of the Rules Governing Judicial Conduct). Furthermore, respondent's public declarations to the defendant and several witnesses that the defendant had "hit the jackpot" were ill-considered and inappropriate. Such remarks diminish public confidence in the integrity and impartiality of the judiciary.

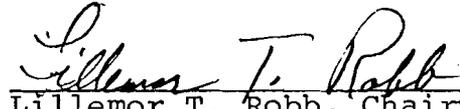
The Commission considers by way of mitigation respondent's acknowledgement that his conduct was wrong and his assurances that "it will not occur again."

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

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.


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

Dated: November 13, 1979
New York, New York

APPEARANCES:

Robert E. Murrin for Respondent

Gerald Stern for the Commission (John W. Dorn, Of Counsel)