

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

ERNEST DEYO,

a Justice of the Town Court of
Beekmantown, Clinton County.

Determination

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

APPEARANCES:

Gerald Stern (Jack J. Pivar, Of Counsel)
for the Commission

Holcombe & Dame (Kenneth H. Holcombe, Of
Counsel) for Respondent

The respondent, Ernest Deyo, a justice of the Town Court of Beekmantown, Clinton County, was served with a Formal Written Complaint dated March 5, 1980, alleging impropriety in his conduct in presiding over ten cases in 1978 and 1979, eight of which included his brother, Rufus Deyo, as a party. Respondent filed an answer dated March 13, 1980.

By order dated April 21, 1980, the Commission designated the Honorable Harold A. Felix as referee to hear and report pro-

posed findings of fact and conclusions of law. The hearing was conducted on May 28, 1980, and the report of the referee was filed on July 24, 1980.

By motion dated August 29, 1980, the administrator of the Commission moved to confirm the referee's report and for a determination that respondent be removed from office. Respondent did not oppose the motion. Oral argument was waived.

The Commission considered the record of this proceeding on October 30, 1980, and makes the following findings of fact.

1. On March 15, 1978, Rufus Deyo filed a claim for \$339.80 against Russell Baker in respondent's court. On March 18, 1978, respondent presided over the case, notwithstanding his relationship to the plaintiff. During the course of the proceeding, the following occurred.

(a) Respondent advised Mr. Baker of his relationship to the plaintiff but refused Mr. Baker's request that he disqualify himself.

(b) Respondent advised Mr. Baker that it was not necessary for the plaintiff to be present.

(c) No witnesses were heard and no evidence was received in support of the plaintiff's claim.

(d) Mr. Baker stated the claim already had been paid but that the work he had contracted plaintiff to do was unsatisfactory.

(e) Respondent ordered that the claim be paid, and he told Mr. Baker that if it were not paid Mr. Baker would "have to be picked up."

(f) On February 12, 1979, respondent entered judgment against Mr. Baker when the latter failed to satisfy the claim.

2. In March 1978 Rufus Deyo filed a claim for \$162.25 against James Bell in respondent's court. Respondent presided over the case, notwithstanding his relationship to the plaintiff. During the course of the proceeding, the following occurred.

(a) Between March 16, 1978, and February 12, 1979, Mr. Bell telephoned respondent and asked that he disqualify himself from the proceeding because of his relationship to the plaintiff. Respondent refused Mr. Bell's request and stated that Mr. Bell had to appear in court before a decision would be made.

(b) Mr. Bell did not appear in court and had no other communication with respondent.

(c) On February 12, 1979, respondent entered judgment in favor of the plaintiff in the amount of \$196.25.

3. On December 13, 1978, Rufus Deyo filed a claim for \$272.16 against Tom Lange in respondent's court. Respondent presided over the case, notwithstanding his relationship with the plaintiff. During the course of the proceeding, the following occurred.

(a) On December 27, 1978, the defendant appeared in court, did not deny the indebtedness and satisfied the claim.

The plaintiff was not present.

(b) Respondent did not offer to disqualify himself, nor did he offer the defendant an opportunity to request his disqualification.

4. On March 10, 1978, Rufus Deyo filed a claim for \$75 against Roy Provost in respondent's court. On March 18, 1978, Mr. Provost appeared before respondent and satisfied the claim. The plaintiff did not appear. At no time did respondent ask for objections to his presiding in the case, notwithstanding his relationship to the plaintiff.

5. On August 30, 1978, Rufus Deyo filed a claim for \$150 against David Supernault in respondent's court. Thereafter Mr. Supernault appeared before respondent and agreed to satisfy the claim in weekly installments of \$10. Respondent entered judgment to that effect. The plaintiff was not present. At no time did respondent ask for objections to his presiding in the case, notwithstanding his relationship to the plaintiff.

6. In March 1978 Rufus Deyo filed a claim for \$94.14 against Allan Sanger in respondent's court. The claim was settled before respondent by the defendant's wife, out of court. Neither the plaintiff nor the defendant appeared before respondent. At no time did respondent ask for objections to his entertaining the claim, notwithstanding his relationship with the plaintiff.

7. On March 15, 1978, Rufus Deyo filed a claim for \$58 against Thomas Kelly in respondent's court. Thereafter the claim

was settled between the parties. Respondent entered judgment as per the settlement. At no time did respondent ask for objections to his acting in the case, notwithstanding his relationship with the plaintiff.

8. On September 12, 1979, Rufus Deyo filed a claim for \$670.44 against Roland Lapier in respondent's court. On September 27, 1979, Mr. Lapier appeared before respondent. The plaintiff arrived thereafter, whereupon Mr. Lapier paid the claim. At no time did respondent ask for objections to his acting in the case, notwithstanding his relationship with the plaintiff.

9. In November 1978 Thomas Peryea filed claims in respondent's court for arrears in rent against Ray Rakes and Gilbert Thomas. During the course of the proceeding, the following occurred.

(a) Mr. Rakes and Mr. Thomas appeared in court before respondent on November 15, 22 and 29, 1978, and disputed the claims. Mr. Peryea was not present on any of these occasions, having been told by respondent that his presence was not necessary.

(b) No witnesses were sworn, and no testimonial or other evidence was taken at any of these occasions.

(c) On February 15, 1979, respondent entered judgments against Mr. Rakes and Mr. Gilbert without having given them prior notice.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Section 14 of the Judiciary Law, Sections 33.1, 33.2, 33.3(a) and 33.3(c)(1)(iv) of the Rules Governing Judicial Conduct and Canons 1, 2, 3A and

3C(1)(d) of the Code of Judicial Conduct. Charges I through VI of the Formal Written Complaint are sustained and respondent's misconduct is established.

By presiding over eight cases in which his brother was the plaintiff, by refusing requests that he disqualify himself and by finding in his brother's favor in each case, even where the validity of the claim was contested and apparently without any evidence or proof of the validity of the claim, respondent has engaged in serious misconduct. His actions are in clear violation of the absolute prohibition against presiding over matters involving a relative within the sixth degree of consanguinity or affinity (Judiciary Law, Section 14). Respondent has used his judicial office for the private benefit of his brother.

Respondent's lack of fitness for office, as exemplified by his action in his brother's cases, is further demonstrated by the egregiously inappropriate manner in which he conducted himself with respect to the Peryea claims. Respondent prejudged the matters, acted as attorney for the plaintiff whom he excused, ignored the defendants' objections to his conduct and entered judgments against them without a trial or notice.

Public confidence in the integrity of the judiciary is essential to the administration of justice. Judicial office is not a personal vehicle to be used to advance familial or other private interests. It is a fundamental public trust to be discharged diligently and fairly. By his conduct herein, respondent has violated that trust. He has used the prestige of his office to

benefit private interests and he has irreparably diminished public confidence in the integrity and impartiality of his court. He has thereby severely prejudiced the administration of justice and established that he lacks the moral judgment and fitness requisite to service on the bench.

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

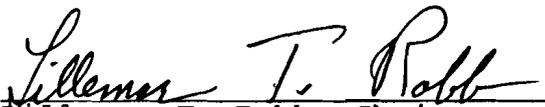
This determination is rendered pursuant to Section 47 of the Judiciary Law, notwithstanding respondent's resignation from the bench on September 30, 1980.

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.

Dated: December 18, 1980
New York, New York


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