

**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

K. RAY EDWARDS,

**Determination**

a Justice of the Russia Town Court  
and an Acting Justice of the Poland  
and Cold Brook Village Courts,  
Herkimer County.

---

THE COMMISSION:

Mrs. Gene Robb, Chairwoman  
John J. Bower, Esq.  
David Bromberg, Esq.  
Honorable Carmen Beauchamp Ciparick  
E. Garrett Cleary, Esq.  
Dolores Del Bello  
Victor A. Kovner, Esq.  
Honorable William J. Ostrowski  
Honorable Isaac Rubin  
Honorable Felice K. Shea  
John J. Sheehy, Esq.

APPEARANCES:

Gerald Stern (Cathleen S. Cenci, Of Counsel) for the  
Commission

Antonio Faga for Respondent

The respondent, K. Ray Edwards, a justice of the  
Russia Town Court, Poland Village Court and Cold Brook Village  
Court, Herkimer County, was served with a Formal Written  
Complaint dated January 23, 1986, alleging that he engaged in ex  
parte communications, that he failed to disqualify himself and  
that he permitted a prosecutor to instruct a jury on a question

of law. Respondent filed an answer dated February 13, 1986.

By order dated February 27, 1986, the Commission designated Peter Preiser, Esq., as referee to hear and report proposed findings of fact and conclusions of law. A hearing was held on April 22, 1986, and the referee filed his report with the Commission on July 14, 1986.

By motion dated September 4, 1986, the administrator of the Commission moved to confirm the referee's report and for a finding that respondent be censured. Respondent opposed the motion on September 24, 1986. Oral argument was waived.

On October 16, 1986, the Commission considered the record of the proceeding and made the following findings of fact.

1. Respondent is a justice of the Russia Town Court and has been since 1959. He is also a justice of the Cold Brook Village Court and acting justice of the Poland Village Court.

2. On May 7, 1984, respondent arraigned Louis Muzyk in the Russia Town Court on a charge of Permitting a Bull to Range at Large, a violation of the Agriculture and Markets Law.

3. The arresting officer advised respondent that Mr. Muzyk had refused to furnish personal information needed for the officer's arrest report.

4. Respondent asked Mr. Muzyk to give the information, but Mr. Muzyk refused.

5. Respondent advised the officer to charge Mr. Muzyk with Obstructing Governmental Administration for failing to give the information.

6. The arresting officer swore out an information charging Mr. Muzyk with Obstructing Governmental Administration, and respondent arraigned him on that charge, as well.

7. Respondent had known Mr. Muzyk for many years and had received numerous past complaints about his roaming cattle. Respondent had made numerous extra-judicial attempts in the past to persuade Mr. Muzyk to pay for damage other property owners claimed had been done by Mr. Muzyk's cattle.

8. After Mr. Muzyk's arraignment but before his trial, respondent went to the home of the complaining witness and discussed the facts underlying the Agriculture and Markets charge and discussed the damage alleged to have been done to the witness' property.

9. On March 26, 1985, respondent presided at Mr. Muzyk's trial. After the jury had retired to deliberate and while respondent was out of the courtroom, the jury returned to ask a question on a point of law.

10. When respondent returned to the room, the prosecutor, Assistant District Attorney Patrick L. Kirk, related the question to respondent.

11. Respondent permitted colloquy to continue among the jury, Mr. Kirk and Mr. Muzyk. Mr. Kirk gave instruction to the jury on a material point of law, and respondent failed to intervene.

12. Mr. Muzyk was found guilty by the jury and was sentenced by respondent to a conditional discharge and fines totaling \$125.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 100.1, 100.2(a), 100.3(a)(2), 100.3(a)(4) and 100.3(c)(1) of the Rules Governing Judicial Conduct and Canons 1, 2A, 3A(2), 3A(4) and 3C(1) of the Code of Judicial Conduct. The charge in the Formal Written Complaint is sustained insofar as it is consistent with the findings of fact enumerated above, and respondent's misconduct is established.

Faced with a perennial community problem, respondent became overly zealous in an attempt to find a judicial solution. He abandoned his neutral role and created the appearance of partiality.

When Mr. Muzyk was brought to court, respondent failed to disqualify himself notwithstanding that he had engaged in numerous past extra-judicial attempts to deal with the defendant's roaming cattle and the damage they had allegedly

caused. Respondent suggested to the arresting officer that an additional charge be laid, then arraigned Mr. Muzyk on the charge. Respondent interviewed a witness outside of court concerning the merits of the case, then presided over the trial notwithstanding this ex parte contact.

At trial, respondent allowed the prosecutor to improperly assume a judicial role by instructing the jury on a material point of law, thus failing to maintain control of his courtroom. Section 100.3(a)(2) of the Rules Governing Judicial Conduct.

The ability to be and appear impartial is an indispensable requirement for a judge. Matter of Sardino v. State Commission on Judicial Conduct, 58 NY2d 286, 290 (1983). Respondent clearly compromised his independence and impartiality by his ex parte contacts and his failure to disqualify himself. Matter of Wilkins, unreported (Com. on Jud. Conduct, Dec. 24, 1985); Matter of Mullen, unreported (Com. on Jud. Conduct, May 22, 1986).

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

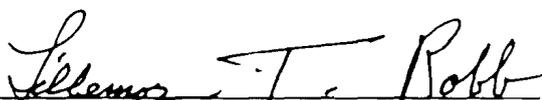
Mrs. Robb, Mr. Bower, Judge Ciparick, Mr. Cleary, Mrs. Del Bello, Mr. Kovner, Judge Ostrowski and Judge Shea concur.

Mr. Bromberg, Judge Rubin 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: November 21, 1986

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