

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

DANIEL P. FALSIONI,

a Judge of the City Court of Lockport,
Niagara County.

Determination

BEFORE: Mrs. Gene Robb, Chairwoman
Honorable Fritz W. Alexander, II
David Bromberg, Esq.
E. Garrett Cleary, Esq.
Dolores DelBello
Michael M. Kirsch, Esq.
Victor A. Kovner, Esq.
Honorable Isaac Rubin
Honorable Felice K. Shea
Carroll L. Wainwright, Jr., Esq.

APPEARANCES:

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

Honorable Daniel P. Falsioni, Respondent
Pro Se.

The respondent, Daniel P. Falsioni, is a part-time judge of the City Court of Lockport, Niagara County, who is permitted to practice law. He was served with a Formal Written Complaint dated April 15, 1980, alleging (i) that respondent permitted the other part-time lawyer-judges of the Lockport City Court, and their law partners and associates, to practice law in 335 cases in the Lockport City Court, Civil Division, from 1974 to 1978 and

(ii) that respondent permitted his own law partner to practice law in 13 cases in the Lockport City Court, Criminal Division, from 1976 to 1977. Respondent filed an answer dated May 29, 1980.

The Commission designated the Honorable Louis Otten referee to hear and report proposed findings of fact and conclusions of law. The hearing was held on November 17, 1980, and the referee filed his report to the Commission on February 21, 1981.

By motion dated May 21, 1981, the administrator of the Commission moved to confirm the referee's report and for a determination that respondent be censured. Respondent opposed the motion in papers dated June 5, 1981. Oral argument was waived.

The Commission considered the record of this proceeding on June 18, 1981, and makes the following findings of fact.

1. The City Court of Lockport is organized administratively in two sections: the Civil Division and the Criminal Division. The Uniform City Court Act governs the Lockport City Court and both divisions thereof. The jurisdictions of the two divisions are separate and distinct, as are their clerical staffs. Each division occupies a separate office in the same building, maintains its own dockets and observes separate procedures. Both divisions use the same courtroom. Default judgments in the Civil Division are generally processed by the court clerk on papers, without the specific knowledge of the judge in individual cases.

2. Respondent presided in the Civil Division during the entire period at issue in the instant proceeding. The Honorable Willard H. Harris, Jr., presided in the Criminal Division during the same period. Both respondent and Judge Harris are part-time judges who also practice law. The Honorable Gerald D. Watson and the Honorable Spencer Lerch presided as acting judges in the Criminal Division during the periods noted below and were at those times part-time judges who also practiced law. The Honorable Fred J. Smith and the Honorable Richard H. Speranza presided as acting judges in the Civil Division during the periods noted below and were at those times part-time judges who also practiced law.

3. A judge of either division of the Lockport City Court is empowered to sit in the other division of the court if necessary. In 1973 and 1974, Judge Willard H. Harris, Jr., of the Criminal Division presided over cases in the Civil Division in respondent's absence.

4. On May 26, 1977, respondent presided over Rignall v. Burdick, notwithstanding that counsel for the plaintiffs, Allen D. Miskell, was an attorney associated in the practice of law with Judge Willard H. Harris, Jr. Respondent knew at the time that Mr. Miskell and Judge Harris were law associates. The defendants were not represented by counsel, were informed of the association and consented to proceed with the hearing.

5. Between August 12, 1974, and September 25, 1978, respondent permitted attorneys Allen D. Miskell, Walter Moxham, Jr.,

and Richard Southard to practice law in the Lockport City Court by obtaining default judgments on behalf of their clients in the Civil Division in the 223 cases listed in Exhibit 1 appended to the Formal Written Complaint, notwithstanding that these attorneys were associated in the practice of law with Judge Willard H. Harris, Jr. Respondent knew at the relevant times that these attorneys and Judge Harris were law associates. Although respondent had no knowledge that these attorneys had applied for default judgments in these particular cases, he had failed to instruct his clerk not to process default judgments for the other Lockport City Court judges and their associates, and he otherwise failed to take steps to prevent such associates from practicing law in the court.

6. On April 18, 1975, respondent permitted Judge Willard H. Harris, Jr., to practice before him as plaintiff's counsel in Bull v. Rauber. The defendants were not represented by counsel. Respondent knew at the time that Judge Harris was a judge of the Lockport City Court but took no action to prohibit him from appearing in the case. Respondent offered to disqualify himself from presiding but proceeded upon consent of the parties.

7. Between May 10, 1974, and May 18, 1977, respondent permitted Judge Willard H. Harris, Jr., to practice law in the Lockport City Court by obtaining default judgments on behalf of his clients in the Civil Division in the 15 cases listed in Exhibit 2 appended to the Formal Written Complaint. Respondent knew at the relevant times that Judge Harris was a judge of the

Lockport City Court. Although respondent had no knowledge that Judge Harris had applied for default judgments in these particular cases, he had not instructed his clerk not to process default judgments for the other Lockport City Court judges and their associates, nor had he otherwise taken steps to prevent Judge Harris from practicing law in the court.

8. Between February 17, 1975, and April 24, 1978, respondent permitted Acting Judge Gerald D. Watson to practice law in the Lockport City Court by obtaining default judgments on behalf on his clients in the Civil Division in the nine cases listed in Exhibit 3 appended to the Formal Written Complaint. Respondent knew at the relevant times that Judge Watson was an acting judge of the Lockport City Court. Although respondent had no knowledge that Judge Watson had applied for default judgments in these particular cases, he had failed to instruct his clerk not to process default judgments for the other Lockport City Court judges, and he otherwise failed to take steps to prevent such judges from practicing law in the court.

9. Between May 20, 1974, and August 4, 1978, respondent permitted attorneys Anthony C. Ben, James L. Fox and Edward Thiel to practice law in the Lockport City Court by obtaining default judgments on behalf of their clients in the Civil Division in the 28 cases listed in Exhibit 4 appended to the Formal Written Complaint, notwithstanding that these attorneys were associated in the practice of law with Acting Judge Gerald D. Watson. Respondent knew at the relevant times that these attorneys and

Judge Watson were law associates and should have known they were practicing law in his court, but he took no action to prohibit these attorneys from practicing law in his court in these cases.

10. Between January 18, 1978, and May 22, 1978, respondent permitted attorneys William B. May and Morgan L. Jones, Jr., to practice law in the Lockport City Court by obtaining default judgments on behalf of their clients in the Civil Division in the five cases listed in Exhibit 5 appended to the Formal Written Complaint, notwithstanding that these attorneys were associated in the practice of law with Acting Judge Spencer Lerch. Respondent should have known these attorneys were practicing law in his court but took no action to prohibit them from doing so.

11. Between November 26, 1974, and June 18, 1975, respondent permitted Acting Judge Fred J. Smith to practice law in the Lockport City Court by obtaining default judgments on behalf of his clients in the Civil Division in the seven cases listed in Exhibit 7 appended to the Formal Written Complaint. Respondent knew at the relevant times that Judge Smith was an acting judge of the Lockport City Court but took no action to prevent Judge Smith from practicing law in these particular cases.

12. On April 8, 1975, and on June 16, 1975, in the cases of Kohl v. Muir and Ben v. Levenson, respectively, respondent permitted Richard H. Speranza to practice law before him. Respondent knew at these times that Mr. Speranza was a member of the

law firm of Acting Judge Fred J. Smith. Respondent offered to disqualify himself from presiding but took no action to prohibit Mr. Speranza from practicing before him.

13. Between January 24, 1975, and October 16, 1975, respondent permitted Richard H. Speranza and Leonard G. Tilney to practice law in the Lockport City Court by obtaining default judgments on behalf of their clients in the Civil Division in the 18 cases listed in Exhibit 8 appended to the Formal Written Complaint. Respondent knew at the relevant times that Mr. Speranza and Mr. Tilney were law partners of Acting Judge Fred J. Smith but took no action to prohibit them from practicing law in his court in these cases.

14. On May 19, 1977, respondent permitted Acting Judge Richard H. Speranza to practice before him as plaintiff's counsel in Wagner v. Bowers. Respondent knew at the time that Judge Speranza was an acting judge of the Lockport City Court. Respondent offered to disqualify himself but took no action to prohibit Mr. Speranza from practicing before him.

15. On March 26, 1976, respondent permitted Acting Judge Richard H. Speranza to practice law in the Lockport City Court by obtaining a default judgment on behalf of his client in the Civil Division in Ferington v. Wilson. Respondent knew at the time that Judge Speranza was an acting judge of the Lockport City Court but took no action to prohibit Judge Speranza from practicing law in this case.

16. On February 3, 1977, respondent permitted Acting Judge Richard H. Speranza to practice before him by appearing as his own counsel in Speranza v. Rau. Respondent knew at the time that Judge Speranza was an acting judge of the Lockport City Court. Respondent offered to disqualify himself but took no action to prohibit Judge Speranza from practicing law in this case.

17. Between February 10, 1976, and October 4, 1977, respondent permitted Leonard G. Tilney, R. Joseph Foltz and Richard T. May to practice law in the Lockport City Court by obtaining default judgments on behalf of their clients in the Civil Division in the 23 cases listed in Exhibit 9 appended to the Formal Written Complaint. Respondent knew at the relevant times that Mr. Tilney, Mr. Foltz and Mr. May were associated in the practice of law with Acting Judge Richard Speranza but took no action to prohibit them from practicing law in these cases.

18. In April 1977 and January 1978, respondent and the director of administration of the courts for the Fourth Judicial Department discussed the applicability of Section 33.5(f) of the Rules Governing Judicial Conduct to the Lockport City Court, said section governing the conduct of part-time judges who practice law. On April 21, 1978, respondent received an opinion from the director of administration, indicating that practice in one division of the court by a judge or the associate of a judge from the other division of the court is improper. Despite the director's opinion, respondent took no action to enforce Section 33.5(f) until he appeared before the Commission to address the issues herein on June 20, 1979.

Thereafter, respondent instructed his court clerk (i) to return any papers received from other Lockport City Court judges, acting judges and the law partners and associates of these judges and (ii) to advise them by letter that they could no longer practice in his court.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 16 and 471 of the Judiciary Law, Sections 33.1, 33.2(a), 33.2(c), 33.3(b)(1), 33.3(b)(2) and 33.5(f) of the Rules Governing Judicial Conduct and Canons 1,2 3B(1) and 3B(2) of the Code of Judicial Conduct. Charges I through VII and Charges IX through XIV of the Formal Written Complaint are sustained and respondent's misconduct is established. Charge VIII of the Formal Written Complaint is not sustained and therefore is dismissed.

A part-time lawyer-judge (i) may not practice law in his own court, (ii) may not practice law before any other part-time lawyer-judge in the same county as his own court, (iii) may not permit his law partners or associates to practice law in his court, (iv) may not permit the practice of law in his court by other part-time lawyer-judges whose courts are in the same county as his own court and (v) may not permit the practice of law in his court by the partners and associates of the part-time lawyer-judges of his own court (Section 33.5[f] of the Rules Governing Judicial Conduct). A presiding judge's offer to recuse himself from such cases does not constitute compliance with these rules. Such a recusal does not address the gravamen of the matter, which

is that a lawyer prohibited from doing so is indeed practicing law in the court. Nor does recusal satisfy the presiding judge's obligation to enforce the rule. Public confidence in the courts is diminished by the appearance of favoritism when a judge acts as the lawyer in a proceeding in his own court, presided over by his judicial colleague.

The assertion that the two divisions of the Lockport City Court comprise two different courts and are therefore not subject to the applicable rules is without merit. Both divisions operate under the appellation of Lockport City Court. Both divisions are governed by the Uniform City Court Act. Both are located in the same building and share the same courtroom. When a judge of one division is unavailable, he may be relieved by a judge of the other division. Whatever the local practice may have been with regard to the two divisions of the court, the fact is that there is one Lockport City Court, and it is improper for the judges and associates of one division to practice in the other division. The entry of a default judgment by an attorney unquestionably constitutes the practice of law, and where the attorney is also a part-time judge, the prohibitions of the Rules apply with equal force. Moreover, in those cases in which respondent permitted the proscribed practice in his own division by part-time judges of that division (the Civil Division), the asserted distinction between the civil and criminal divisions is of no moment.

In initiating discussions of the issues herein with the director of administration as early as 1977, respondent demonstrated

a commendable sensitivity to the improprieties and appearances of impropriety inherent in his conduct and that of his colleagues. Nevertheless, his failure to take any corrective action for more than two years after these discussions and more than one year after receipt of an opinion from the director of administration indicating the impropriety of the conduct of the part-time lawyer-judges of Lockport, cannot be overlooked.

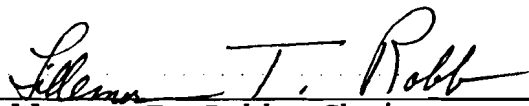
By reason of the foregoing, the Commission determines that the appropriate sanction is admonition.

All concur, except that Mr. Cleary dissents only with respect to sanction and votes that the appropriate disposition is a letter of dismissal and caution.

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 6, 1981


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