

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

ANTONIO S. FIGUEROA,

Determination

a Judge of the Criminal Court of the
City of New York, New York County.

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, Antonio S. Figueroa, a judge of the Criminal Court of the City of New York, was served with a Formal Written Complaint dated June 20, 1978, alleging in two charges of misconduct that respondent improperly intervened in a felony proceeding in which the defendant was his great grandnephew. Respondent filed an answer dated September 12, 1978, denying in substantial part the material allegations.

By order dated November 16, 1978, the Commission appointed Henry J. Smith, Esq., as referee to hear and report to the Commission with respect to the issues herein. A hearing was conducted on February 21 and 22, 1979, and the referee's report dated July 25, 1979, was filed with the Commission. The referee,

inter alia, recommended dismissing Charge I of the Formal Written Complaint and sustaining Charge II. The referee also reached conclusions with respect to the veracity of respondent's testimony.

By notice dated August 27, 1979, the administrator of the Commission moved to disaffirm the referee's report as to Charge I, to confirm as to Charge II, and to render a determination that respondent be censured. Respondent opposed the administrator's motion and moved to confirm the referee's report as to Charge I, to disaffirm as to Charge II, and to dismiss the Formal Written Complaint.

The Commission received memoranda and entertained oral argument with respect to these motions on September 26, 1979, thereafter considered the record of this proceeding, and upon that record makes the findings and conclusions below.

Charge I is not sustained and therefore is dismissed.

With respect to Charge II, the Commission finds the following facts.

1. On February 25, 1977, the grand jury of New York County indicted Frank Acosta on the felony charge of criminal possession of a weapon.

2. Frank Acosta and respondent are related by consanguinity in that Mr. Acosta is respondent's great grandnephew.

3. On March 24, 1977, Mr. Acosta was arraigned in Supreme Court and entered a plea of not guilty. People v. Frank Acosta was thereupon assigned to the Honorable E. Leo Milonas, then a judge of the New York City Criminal Court assigned to Supreme Court, and the case was adjourned to April 5, 1977.

4. On April 5, 1977, after Judge Milonas, defendant's counsel and an assistant district attorney discussed a possible reduction of the charge to a misdemeanor, the assistant district attorney advised Judge Milonas that such a plea was not satisfactory. The case was then adjourned to April 12, 1977.

5. Respondent knew that the Acosta case was before Judge Milonas.

6. On April 10, 1977, respondent initiated an ex parte telephone conversation with Judge Milonas, with whom he was acquainted, and spoke to him about the Acosta case. Respondent told Judge Milonas that the defendant was his nephew, a college student and of good character who had done "something stupid" in carrying a gun (Ref. 43).*

7. At the close of his telephone conversation with respondent, Judge Milonas concluded (i) that respondent's call had been "improper" and (ii) that he must disqualify himself from presiding further in the Acosta case (Ref. 44).

*"Ref." notations refer to the appropriate page in the referee's report.

8. On April 12, 1977, at the call of the court calendar, Judge Milonas announced the transfer of People v. Frank Acosta to another judge.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 33.1, 33.2(a), 33.2(b), 33.2(c) and 33.3(a)(4) of the Rules Governing Judicial Conduct and Canons 1, 2A, 2B and 3A(4) of the Code of Judicial Conduct. Charge II is sustained and respondent's misconduct is established.

The referee has reported, and the Commission so concludes, that upon learning that the Acosta case was before Judge Milonas, with whom he had previously served as a New York City Criminal Court judge, respondent "decided to call Judge Milonas...in the hope that his formerly close relationship with Judge Milonas might result in some advantage toward the disposition of the case" (Ref. 46).

While respondent was obviously motivated by an understandable concern for the plight of his great grandnephew, it was clearly improper for him to have telephoned Judge Milonas, ex parte, in what amounted to an assertion of special influence. In so doing, respondent violated the applicable sections of the Rules Governing Judicial Conduct, which require a judge to "conduct himself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary" (Section 33.2), and which prohibit a judge from allowing a family relationship to influence his judicial conduct or judgment (Section 33.2[b]),

lending the prestige of his office to advance the private interests of others (Section 33.2[c]) and initiating ex parte or other communications in a pending proceeding, except as authorized by law (Section 33.3[a][4]).

While respondent's misconduct in this regard, standing alone, is serious and would in any event require public discipline, the Commission considered respondent's motivation in mitigation of his misconduct, with respect to determining the appropriate sanction. Although high standards of conduct are expected and required of all judges because of their special place in this society, those who hold judicial office are subject to the same fallibilities of human nature as anyone else. It is not difficult for the Commission to understand how deep concern for a troubled member of his family may have affected respondent's judgment as to the impropriety of calling Judge Milonas to assert special influence. Judge Milonas properly did not accede to the influence and conducted himself with propriety and decorum.

Respondent's misconduct in this case is exacerbated by his conduct during the proceedings before the Commission. The referee has found, and the Commission concludes, that "respondent testified falsely in all important respects as to Charge II" (Ref. 42). Specifically, the Commission concludes that (i) at the hearing, respondent testified falsely with respect to his intention in placing the telephone call to Judge Milonas (Ref. 45-47) and (ii) in testimony before

the Commission on October 12, 1977 (Hearing Exhibit 5), respondent testified falsely in denying that he spoke to any judge with respect to the Acosta case and specifically denying recollection of speaking to Judge Milonas about it (Ref. 48-50).

While respondent's telephone call to Judge Milonas may be attributed to a lapse of good judgment engendered by concern for the plight of his great grandnephew, no such inference may be made with respect to false testimony in the course of a disciplinary proceeding conducted well after the Acosta case had been concluded in the courts. The defendant's plight was no longer at issue when respondent appeared before the Commission. In Matter of Perry, the court held that "the giving of false testimony, particularly by a member of the judiciary, is inexcusable. Such conduct on the part of a judicial officer, whose responsibility is to seek out the truth and evaluate the credibility of those who appear before him is not conducive to the efficacy of our judicial process and is destructive of his usefulness on the bench." Matter of Perry, 53 AD2d 882 (2d Dept. 1976; judge removed from office).

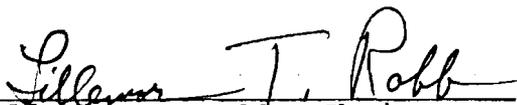
In consideration of the appropriate sanction, the Commission notes that respondent is scheduled to retire from the bench on December 31, 1979.

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

All concur, except for Judge Rubin, who dissents only with respect to sanction, and votes that the appropriate sanction is admonition.

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 1, 1979

APPEARANCES:

Emilio Nunez for Respondent

Gerald Stern for the Commission (Robert H. Straus, Jeanne O'Connor, Of Counsel)