

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

ALAN I. FRIESS,

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

Determination

BEFORE: Mrs. Gene Robb, Chairwoman
Honorable Fritz W. Alexander, II
David Bromberg, Esq.
Honorable Richard J. Cardamone
E. Garrett Cleary, Esq.
Dolores DelBello
Victor A. Kovner, Esq.
Honorable Isaac Rubin
Honorable Felice K. Shea

APPEARANCES:

Gerald Stern (Alan W. Friedberg, of Counsel)
for the Commission
Eric A. Seiff for Respondent

The respondent, Alan I. Friess, a judge of the Criminal Court of the City of New York, Kings County, was served with a Formal Written Complaint dated February 10, 1981, alleging misconduct in relation to the arraignment of the defendant in People v. Elisia Fominas in November 1980. Respondent filed an answer dated March 6, 1981.

By order dated March 16, 1981, the Commission designated Robert MacCrate, Esq., referee to hear and report proposed findings of fact and conclusions of law.

On April 16, 1981, the administrator of the Commission, respondent and respondent's counsel entered into an agreed statement of facts pursuant to Section 44, subdivision 5, of the Judiciary Law, waiving the hearing provided by Section 44, subdivision 4, of the Judiciary Law and stipulating that the Commission make its determination upon the pleadings and the agreed upon facts. The Commission approved the agreed statement, obviating the hearing and the further services of the referee.

The Commission heard oral argument on May 26, 1981, as to whether the agreed upon facts established respondent's misconduct and, if so, the appropriate sanction. Respondent appeared with his counsel at oral argument. Thereafter the Commission considered the record of this proceeding and now makes the following findings of fact.

1. November 27, 1980, was Thanksgiving day. At approximately 12:45 A.M. on that date, respondent presided over the arraignment of the defendant in People v. Elisia Fominas in Part APAR3 of the Criminal Court of the City of New York in Kings County (Brooklyn). The defendant was charged with murder and hindering prosecution. She was represented by the Legal Aid Society.

2. During the course of the arraignment, on the second call of the case, respondent stated that he would release the defendant in his (respondent's) custody and would find lodging for her with a woman friend of his. Subsequently, on the third call of the case, respondent released the defendant on her own recognizance and adjourned the case to the next session of the court, scheduled for the evening of November 27, 1980. Respondent then accompanied the

defendant to his residence in Brooklyn and provided overnight lodging for her. Respondent and a woman friend of his remained at the premises.

3. Between 10:45 A.M. and 11:15 A.M. on November 27, 1980, following a conversation between respondent and the defendant, respondent asked Bernard Udell, an attorney friend of his, to meet with the defendant. The Legal Aid Society was still the defendant's attorney of record.

4. Mr. Udell met with Ms. Fominas during the day on November 27, 1980, and appeared with her in court that evening as her attorney. Mr. Udell neither requested nor received a fee. He did not discuss the merits of the case with respondent.

5. During the day on November 27, 1980, respondent arranged for another judge to preside over the Fominas case at the court session scheduled for that evening. At approximately 7:30 P.M. on November 27, 1980, respondent formally recused himself from the Fominas case, stating in open court, on the record, that he had taken steps to provide the defendant with lodging. Respondent's formal recusal from the case preceded, by at least 24 hours, publication in the press of his earlier actions.

6. Respondent testified under oath that he made his offer to provide the defendant with lodging because the defendant was poor and she feared for her safety. Respondent believed that the defendant had no available friends or relatives to whom she could turn and that there were no public facilities readily accessible to her at that holiday hour.

7. The evidence indicates that respondent was motivated by compassion and his concern for the defendant's welfare and safety.

8. Respondent acknowledges that, by providing lodging at his residence for the defendant and by asking an attorney to meet with the defendant who at the time was represented by the Legal Aid Society, his actions created the appearance of impropriety and brought the judiciary into disrepute.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 33.1, 33.2 and 33.3(a)(1) of the Rules Governing Judicial Conduct and Canons 1, 2 and 3A(1) of the Code of Judicial Conduct. The charge in the Formal Written Complaint is sustained and respondent's misconduct is established.

Public confidence in the integrity and impartiality of the judiciary is indispensable to the fair and proper administration of justice. A judge's conduct must be and appear to be beyond reproach if respect for the court is to be maintained.

By his conduct in this case, respondent exhibited extraordinarily poor judgment and a serious misunderstanding of the role of a judge in our legal system. Respondent's conduct in providing shelter to Ms. Fominas compromised the judge's impartiality in the case and diminished public confidence in the court. It was also improper for respondent to introduce new counsel to a defendant already represented by other counsel in a case before him.

Though respondent was motivated by compassion for the defendant, the result of his conduct was to bring the judiciary into disrepute. While much of the public attention focussed on this case

has been characterized by exaggeration and unwarranted salacious innuendo, respondent should have known that his conduct would make him and the judiciary vulnerable to such publicity.

The issue now before us is whether respondent's credibility as a judge has been so compromised as to require his removal from office. A single act of misconduct of such magnitude by a judge might well warrant removal, absent compelling mitigating circumstances. Here there are such mitigating circumstances.

Respondent realized the error in his action almost immediately and, without prompting, took steps to ameliorate the situation by arranging for another judge to replace him in the case. He reported his error in open court, on the record, at the session next following his mistaken act. We believe that respondent has reflected on the ramifications of his actions, and we are convinced that he now understands the nature of his misconduct and will never again repeat it.

Respondent is an intelligent, capable jurist with an otherwise unblemished record. Respondent must be disciplined for his conceded, serious misconduct, but the Commission believes that respondent's capacity to serve and regain public confidence has not been irreparably harmed.

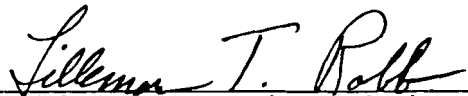
By reason of the foregoing, the Commission determines that the appropriate sanction is censure.

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

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: June 25, 1981
Albany, New York



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