

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

Determination

ROGER W. GLOSS,

a Justice of the Sheridan Town
Court, Chautauqua County.

THE COMMISSION:

Mrs. Gene Robb, Chairwoman
Honorable Myriam J. Altman
Henry T. Berger, Esq.
John J. Bower, Esq.
Honorable Carmen Beauchamp Ciparick
E. Garrett Cleary, Esq.
Dolores Del Bello
Victor A. Kovner, Esq.
Honorable William J. Ostrowski
Honorable Isaac Rubin
John J. Sheehy, Esq.

APPEARANCES:

Gerald Stern (John J. Postel, Of Counsel) for the
Commission

Smith, Murphy & Schoepperle (By Victor Alan Oliveri)
for Respondent

The respondent, Roger W. Gloss, a justice of the
Sheridan Town Court, Chautauqua County, was served with a Formal
Written Complaint dated August 11, 1987, alleging political
activity and improper service on a government committee.
Respondent filed an answer dated September 9, 1987.

By order dated September 24, 1987, the Commission designated Francis J. Offermann, Jr., Esq., as referee to hear and report proposed findings of fact and conclusions of law. A hearing was held on December 14 and 15, 1987, and the referee filed his report with the Commission on September 1, 1988.

By motion dated October 19, 1988, the administrator of the Commission moved to confirm in part and disaffirm in part the referee's report, to adopt additional conclusions of law and for a finding that respondent be censured. Respondent opposed the motion by cross motion on November 4, 1988. The administrator filed a reply on November 10, 1988. Oral argument was waived.

On November 16, 1988, the Commission considered the record of the proceeding and made the following findings of fact.

As to Charge I of the Formal Written Complaint:

1. Respondent has been a justice of the Sheridan Town Court since January 1, 1982. He was a candidate for judicial office in 1981 and 1985.

2. In August 1982, respondent attended a fund-raiser for Richard Kimball, Jr., a Republican candidate for state Assembly.

3. On May 12, 1983, respondent attended a Chautauqua County Republican Committee meeting at which John A. Glenzer received the party's endorsement for county executive.

4. From June through November 1983, respondent attended some meetings of the Committee to Elect John Glenzer County Executive and discussed placement of campaign signs.

5. On November 30, 1983, respondent attended a Republican county legislative caucus and distributed several admission tickets for a post-election fund-raiser for Mr. Glenzer, who had been elected county executive.

6. On March 12, 1984, respondent was appointed administrative assistant in the county Department of Public Works. He was interviewed for the position at the suggestion of Mr. Glenzer and hired by the director of the department.

7. In June 1985, respondent distributed some raffle tickets on behalf of the Chautauqua County Republican Legislative Support Committee, an organization that supported Republican candidates for county legislature.

8. On either November 2, 1983, or April 25, 1985, respondent attended a fund-raiser for Mr. Glenzer's campaign for county executive at a restaurant in Dunkirk.

9. From July through November 1985, respondent attended some meetings of the Committee to Re-elect County Executive John Glenzer and discussed the placement of campaign signs.

10. On August 9, 1985, respondent attended a fund-raiser for Mr. Glenzer's campaign at a ski resort at Cherry Creek.

11. On August 10, 1985, respondent picked up 300 campaign signs on behalf of the Committee to Re-elect County Executive John Glenzer.

12. Between August and November 1985, respondent drove a friend along Route 60 between Jamestown and Dunkirk while the friend posted campaign signs on behalf of Mr. Glenzer's campaign.

As to Charge II of the Formal Written Complaint:

13. The charge is not sustained and is, therefore, dismissed.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 100.1, 100.2 and 100.7 of the Rules Governing Judicial Conduct and Canons 1, 2 and 7A of the Code of Judicial Conduct. Paragraphs 4(a), 4(c), 4(d), 4(f), 4(h), 4(i), 4(j), 4(k), 4(l), 4(m) and 4(n) of Charge I of the Formal Written Complaint are sustained insofar as they are consistent with the findings herein, and respondent's misconduct is established. Paragraphs 4(b), 4(e), 4(g) and 4(o) of Charge I and Charge II are dismissed. Respondent's cross motion is denied.

Elected judges obtain their positions through the political process and therefore may engage in political activity only on their own behalf for a prescribed period. The rules and canons of conduct carefully restrict the nature of a judge's political activity. At no time is a judge permitted to support or appear to support other candidates. Section 100.7 of the Rules Governing Judicial Conduct; Canon 7A of the Code of Judicial Conduct.

Respondent substantially violated these restrictions. In 1982 and 1983, when he was not a candidate for judicial office, respondent attended partisan political meetings and fund-raisers for non-judicial candidates. He distributed tickets to one political fund-raiser. In addition, although he was a candidate in 1985, respondent's fund-raising and campaign activities on behalf of candidates for county executive and the county legislature were clearly improper.

"...Judges must hold themselves aloof from and refrain from engaging in political activity, except to the extent necessary to pursue their candidacies during their public election campaigns." Matter of Maney v. State Commission on Judicial Conduct, 70 NY2d 27, 30 (1987). Respondent's repeated and notorious violations of the rules restricting political activity by judges warrant a severe sanction.

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

Mrs. Robb, Mr. Berger, Mr. Bower, Judge Ciparick, Mrs. Del Bello, Mr. Kovner, Judge Ostrowski and Mr. Sheehy concur.

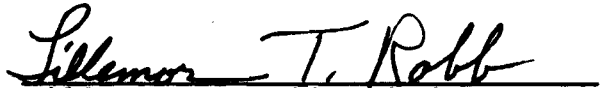
Judge Altman and Mr. Cleary dissent as to sanction only and vote that respondent be admonished.

Judge Rubin was 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: December 21, 1988


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