

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

MICHAEL J. GREENFELD,

a Justice of the Valley Stream
Village Court, Nassau County.

THE COMMISSION:

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

APPEARANCES:

Gerald Stern (Alan W. Friedberg, Of Counsel) for the
Commission

Lyman & Tenenbaum, P.C. (By Irving Tenenbaum) for
Respondent

The respondent, Michael J. Greenfeld, a justice of the
Valley Stream Village Court, Nassau County, was served with a
Formal Written Complaint dated November 19, 1986, alleging that
he improperly delegated his judicial duties and gave false
information to an administrative judge. Respondent filed an
answer dated December 30, 1986.

On June 1, 1987, 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 for by Section 44, subdivision 4, of the Judiciary Law and stipulating that the Commission make its determination based on the pleadings and the agreed upon facts. The Commission approved the agreed statement on June 19, 1987.

The administrator and respondent submitted memoranda as to sanction. On July 17, 1987, the Commission heard oral argument, at which respondent and his counsel were heard, and thereafter considered the record of the proceeding and made the following findings of fact.

As to Charge I of the Formal Written Complaint:

1. Respondent is a justice of the Valley Stream Village Court and has been since March 10, 1986. Respondent was acting justice of the court from April 1, 1983, to March 9, 1986. As acting justice, respondent substituted for the village justice when he was unable to sit. From April 1, 1983, to May 1, 1985, respondent presided over approximately 30 percent of the cases of the court. From May 1, 1985, to March 9, 1986, respondent presided over all the cases in the court because of the illness of Village Justice James I. Lysaght. Judge Lysaght died on March 4, 1986.

2. Between April 1, 1983, and March 9, 1986, respondent permitted the deputy village attorney, who prosecuted Vehicle and Traffic Law and village ordinance violations in respondent's court, to perform judicial duties in numerous cases in the absence of respondent. The deputy village attorney was permitted to: a) conduct conferences with defendants; b) accept guilty pleas; c) determine the amounts of fines and advise defendants of the amounts of fines to be paid; and, d) enter dispositions of cases on official court records.

3. As a result of respondent's delegation of his duties, numerous defendants were led to believe that the deputy village attorney was the judge disposing of their cases.

4. In delegating his judicial duties to the deputy village attorney, respondent was following a practice established by Judge Lysaght. After his appointment as village justice, respondent changed the practice to require his review of the prosecutor's proposed disposition before defendants could leave the court. The defendants were not required to appear before respondent but were told by the prosecutor that the proposed disposition required respondent's approval.

5. Between March 10, 1986, and June 23, 1986, respondent engaged in several ex parte communications with the deputy village attorney concerning the recommended disposition of cases during which the prosecutor set forth the basis for his recommendations.

As to Charge II of the Formal Written Complaint:

6. On November 26, 1985, an unsigned letter was sent to the Office of Court Administration, complaining, inter alia, that cases in respondent's court were disposed of without defendants ever appearing before a judge.

7. The administrative judge for Nassau County subsequently forwarded the complaint to Judge Lysaght and to respondent and requested a response to the allegations.

8. In January 1986, respondent sent an undated letter to the administrative judge in response to the complaint. The letter was drafted by respondent after consulting with Judge Lysaght and was signed by Judge Lysaght and respondent.

9. The letter stated, "All cases disposed of by plea bargaining are subject to approval by the presiding judge who reviews them the same night." Respondent falsely advised the administrative judge that guilty pleas were subject to the approval of the presiding judge and were reviewed by the presiding judge the same night that the guilty pleas were entered.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 100.1, 100.2(a) and 100.3(a)(4) of the Rules Governing Judicial Conduct and Canons 1, 2A and 3A(4) of the Code of Judicial Conduct. Charges I and II of the Formal Written Complaint are sustained, and respondent's misconduct is established.

Over a period of years in numerous cases, respondent abandoned his judicial duties and improperly delegated them to the prosecutor. This created the impression that an interested party in the courtroom was disposing of cases, not a neutral and impartial judge. The improper delegation of judicial functions constitutes misconduct. Matter of Hopeck, 1981 Annual Report 133 (Com. on Jud. Conduct, Aug. 15, 1980); Matter of Caponera, 2 Commission Determinations 332 (Com. on Jud. Conduct, Apr. 21, 1981). To place adjudicative responsibilities in the hands of an advocate in the case is especially egregious. Matter of Rider, unreported (Com. on Jud. Conduct, Jan. 30, 1987).

We do not accept respondent's arguments that as an acting justice he was compelled to follow the practices established by the elected village justice. Although the elected justice in a village may establish some administrative procedures which the acting justice may find it necessary to follow, the acting justice is a duly-authorized judge who must act independently in exercising his judicial functions. The acting justice is required to comply with the law and adhere to ethical standards, regardless of whether the village justice does so or not.

Respondent's misconduct was not limited to the improper delegation of duties. He acknowledged that he made false statements in a letter to his administrative judge in an

attempt to conceal his improper practices and, thus, prevented the administrative judge from taking steps to correct them. Such deception is antithetical to the role of a judge who is sworn to uphold the law and seek the truth. Matter of Myers v. State Commission on Judicial Conduct, 67 NY2d 550, 554 (1986); Matter of White, 1987 Annual Report 153, 156 (Com. on Jud. Conduct, Aug. 8, 1986).

Respondent failed to change his practice even after the administrative judge's inquiry, though at the time respondent was conducting all the business of the court due to the elected judge's illness, thus further exacerbating the misconduct. Matter of Sims v. State Commission on Judicial Conduct, 61 NY2d 349, 357 (1984).

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


Mrs. Robb, Judge Ciparick, Mr. Cleary, Mrs. DelBello, Mr. Kovner, Judge Ostrowski, Judge Rubin, Judge Shea and Mr. Sheehy concur.

Mr. Bower and Mr. Bromberg 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: September 2, 1987


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