

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

WILLARD H. HARRIS, JR.,

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

APPEARANCES:

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

Willard H. Harris, Jr., Respondent Pro Se

The respondent, Willard H. Harris, Jr., 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 practiced law in the Lockport City Court, (ii) that respondent permitted his law partner and associates to practice law in the Lockport City Court, (iii) that respondent permitted other Lockport City Court judges, their law partners and associates to

practice in the Lockport City Court and (iv) that respondent failed to cooperate with the Commission during its investigation of these matters. Respondent filed an answer dated August 8, 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 from October 6 through 10, 1980, and the referee filed his report to the Commission on February 6, 1981.

By motion dated May 21, 1981, the administrator of the Commission moved to confirm in part and disaffirm in part the referee's report and for a determination that respondent be removed from office. Respondent cross-moved on August 14, 1981, to disaffirm the referee's report and to dismiss the Formal Written Complaint. The Commission heard oral argument on September 22, 1981, thereafter considered the record of the proceeding and now 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.

2. Respondent presided in the Criminal Division during the entire period at issue in the instant proceeding. The Honorable Daniel P. Falsioni presided in the Civil Division during the same period. Both respondent and Judge Falsioni 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, respondent presided over cases in the Civil Division in Judge Falsioni's absence.

4. Between September 5, 1974, and September 25, 1978, respondent permitted Richard C. Southard, Allen Miskell and Walter Moxham, Jr., to practice law by obtaining default judgments on behalf of their clients in the Civil Division in 223 of the 224 cases listed in Exhibit 1 appended to the Formal Written Complaint and by appearing in a summary proceeding in the remaining case listed in Exhibit 1. At the relevant times Mr. Southard was a member of respondent's law firm "Harris and Southard," and Mr. Moxham and Mr. Miskell were associated in the practice of law with respondent. Respondent benefitted from the practice of law

by his associates in that the legal fees earned in those cases inured to his benefit.

5. On January 22, 1974, respondent permitted Richard C. Southard to practice law by appearing as his own attorney and obtaining a default judgment in the Civil Division in Andrews and Southard v. Balcom. At the time Mr. Southard was a member of respondent's law firm.

6. On July 8, 1974, and January 28, 1976, respondent presided over People v. Andrew Filipovich and People v. Kevin A. Bancroft, respectively, in which the defendants were clients of his law firm and in which Richard C. Southard, a member of respondent's law firm, was listed as attorney of record. Respondent benefitted from Mr. Southard's appearances in these cases as a result of the firm's financial agreements.

7. On December 23, 1973, and on February 22, 1974, while serving as a judge in the Civil Division during Judge Falsioni's absence, respondent practiced law in the Civil Division by obtaining default judgments in Thurston v. Nerber and Household Finance Corp. v. Wagner, respectively.

8. Between June 24, 1974, and February 10, 1977, respondent practiced law by obtaining default judgments in the Civil Division in the 16 cases listed in Exhibit 2 appended to the Formal Written Complaint.

9. Between February 20, 1974, and August 15, 1978, respondent permitted Gerald D. Watson to practice law before him in the Criminal Division in the 84 cases listed in Exhibit 3

appended to the Formal Written Complaint. Respondent knew at the relevant times that Mr. Watson was an acting judge of the Lockport City Court, Criminal Division.

10. Between February 20, 1974, and September 27, 1978, respondent permitted Anthony C. Ben, James Fox, Robert Scheffer and Edward Thiel to practice law before him in the Criminal Division in the 172 cases listed in Exhibit 4 appended to the Formal Written Complaint. Respondent knew at the relevant times that these attorneys were associated in the practice of law with Acting Lockport City Court Judge Gerald D. Watson of the Criminal Division.

11. On January 31, 1978, respondent permitted Spencer Lerch to practice law before him in People v. David L. Lewis in the Criminal Division. Respondent knew at the time that Mr. Lerch was an acting judge of the Lockport City Court, Criminal Division.

12. On February 6, 1978, respondent permitted Lockport Assistant Corporation Counsel Morgan C. Jones to practice law before him in People v. Patrick Hawkins in the Criminal Division. Respondent knew at the time that Mr. Jones was associated in the practice of law with Acting Lockport City Court Judge Spencer Lerch of the Criminal Division.

13. Between June 8, 1976, and August 9, 1977, respondent permitted James J. Sansone to practice law before him in the Criminal Division in the 13 cases listed in Exhibit 5 appended to the Formal Written Complaint. Respondent knew at the relevant

times that Mr. Sansone was associated in the practice of law with Lockport City Court Judge Daniel P. Falsioni of the Civil Division.

14. Between January 29, 1976, and August 23, 1977, respondent permitted Richard Speranza to practice law before him in the Criminal Division in the 87 cases listed in Exhibit 6 appended to the Formal Written Complaint. Respondent knew at the relevant times that Mr. Speranza was an acting judge of the Lockport City Court, Civil Division.

15. Between December 2, 1974, and January 10, 1978, respondent permitted Leonard Tilney, Joseph Foltz and Richard May to practice law before him in the Criminal Division in the 44 cases listed in Exhibit 7A 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 Lockport City Court Judges Richard Speranza and Fred Smith of the Civil Division.

16. Between December 2, 1974, and December 2, 1975, respondent permitted Richard Speranza to practice law before him in the Criminal Division in the 19 cases listed in Exhibit 7B appended to the Formal Written Complaint. Respondent knew at the time that Mr. Speranza was a member of the law firm of Acting Lockport City Court Judge Fred J. Smith of the Civil Division.

17. Respondent failed to respond to six written inquiries sent to him by the Commission between March 5, 1979, and October 8, 1979, during the Commission's investigation of the matter herein.

18. On July 12, 1979, respondent appeared to give

testimony before a member of the Commission during the Commission's investigation of the matter herein. At his appearance, respondent claimed to have responded to a Commission letter dated March 29, 1979. Such letter was never received by the Commission. Respondent was asked at his appearance to furnish a copy of such letter to the Commission. Respondent failed to furnish such copy.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 16, 42 and 471 of the Judiciary Law, Sections 33.1, 33.2(a), 33.3(b)(3) and 33.5(f) of the Rules Governing Judicial Conduct and Canons 1, 2 and 3B(3) of the Code of Judicial Conduct. Charge I, paragraphs (a) and (c), of the Formal Written Complaint, and Charges II through XI of the Formal Written Complaint are sustained and respondent's misconduct is established. Paragraph (b) of Charge I 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 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). Public confidence in the integrity and impar-

tiality of the courts is diminished when a part-time judge acts as a lawyer in a proceeding in his own court before one of his judicial colleagues. Public confidence is likewise diminished by the appearance of favoritism when part-time lawyer-judges and their associates routinely appear before one another.

Respondent's 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. Indeed, respondent, though himself a judge of the Criminal Division, sat in the Civil Division in 1973 and 1974 in the absence of one of the judges of that 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 law in the other division.

In any event, respondent's assertion that the two divisions are in fact two separate courts is of no consequence with respect to (i) representing clients in his own division of the court, (ii) presiding over cases in which the defendants were clients of his own law firm and (iii) permitting other Criminal Division judges and their associates to practice law before him in that division. Respondent's misconduct in these matters has compromised the integrity of his court and has prejudiced the

administration of justice. His misconduct is exacerbated by the financial benefits he derived from his own inappropriate appearances as a lawyer in his own division, and from the appearances of his law associates in cases before him.

In hundreds of cases over several years, respondent engaged in conduct which failed to conform to the ethical standards required of a judge. His misconduct was not isolated or temporary. His assertion of good faith misinterpretation of the applicable statutes and rules is disingenuous. One need not be familiar with specific statutes and canons of judicial conduct, for example, to know that a judge should not preside over cases involving his law firm's clients.

Respondent's failure to cooperate with the Commission during its investigation of the matters herein further compounds the impropriety of his conduct and demonstrates a disregard of the obligations of judicial office. Judiciary Law Section 42(3); Matter of Jordan, 47 NY2d(xxx)(zzz)(Ct. on the Judiciary 1979); Matter of Cooley, 53 NY2d 64 (1981)

The totality of respondent's misconduct is grave, brings disrepute to the judiciary and warrants appropriate discipline.

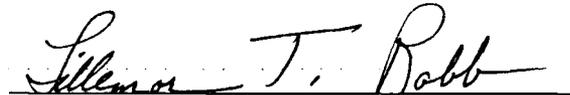
By reason of the foregoing, the Commission determines that respondent should be removed from office.

All concur.

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