

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

JAMES HOPECK,

Determination

a Justice of the Town Court of
Halfmoon, Saratoga County.

BEFORE: Mrs. Gene Robb, Chairwoman
Honorable Fritz W. Alexander, II
David Bromberg, Esq.
Honorable Richard J. Cardamone
Dolores DelBello
Michael M. Kirsch, Esq.
Victor A. Kovner, Esq.
William V. Maggipinto, Esq.
Honorable Isaac Rubin
Honorable Felice K. Shea
Carroll L. Wainwright, Jr., Esq.

APPEARANCES:

Gerald Stern for the Commission
David L. Riebel for Respondent

The respondent, James Hopeck, a justice of the Town Court of Halfmoon, Saratoga County, was served with a Formal Written Complaint dated July 3, 1979, alleging misconduct in that respondent (i) directed his wife to preside in court over ten traffic cases in his absence one evening, (ii) failed to disqualify himself and encouraged ex parte communication in a case involving a defendant with a familial relationship to his wife and (iii) left the bench and argued with an attorney over the attorney's conduct in court. Respondent filed an answer dated September 6, 1979.

The administrator of the Commission, respondent and respondent's counsel entered into an agreed statement of facts on April 7, 1980, 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 on the pleadings and the agreed upon facts. The Commission approved the agreed statement as submitted, determined that no outstanding issue of fact remained and scheduled oral argument to determine (i) whether the facts establish misconduct and (ii) an appropriate sanction, if any. Both the administrator and respondent waived oral argument and submitted memoranda on the issues.

The Commission considered the record in this proceeding in executive session on June 18, 1980, and upon that record makes the following findings of fact.

With respect to Charge I:

1. On August 24, 1977, respondent was suddenly taken ill and realized he would be unable to attend the session of his court scheduled for that evening.

2. The court calendar on the evening of August 24, 1977, consisted of ten Uniform Traffic Tickets returnable before respondent that evening: People v. LaFontaine, People v. Egan, People v. Gonyea, People v. Lincham, People v. Berthiaume, People v. Fernet, People v. Rigney, People v. DiNola, People v. DiCenzo and People v. Capra.

3. Upon taking ill, respondent directed his wife, who was also his court clerk, to attend his court that evening and to advise those who would be present that (i) the court would allow two-week adjournments to defendants who so requested or (ii) defendants could plead guilty under procedures for pleading guilty by mail by signing the back of the Uniform Traffic Ticket and paying a fine which respondent's wife would collect.

4. On the margin of the court's copy of each Uniform Traffic Ticket returnable on the evening of August 24, 1977, respondent wrote the amount of the fine which would be imposed in the event of a guilty plea.

5. Respondent also told his wife that if anyone objected to the procedure set forth in paragraph 3 above, the objecting party should be granted an adjournment to discuss the matter with respondent.

6. On the evening of August 24, 1977, respondent's wife appeared in court and made the announcement as directed by respondent. Seven defendants thereupon pled guilty to the original charges filed against them and paid fines in the amount respondent had previously written on the margins of the respective tickets.

7. Three other defendants consulted with the assistant district attorney, who was present, and requested to plea bargain the charges against them. Respondent's wife thereupon telephoned respondent, and respondent and the assistant district attorney discussed the three cases over the telephone and agreed to reductions in each case.

8. No announcement had been made by respondent's wife or anyone else that plea bargaining would be permissible under the circumstances or that the defendants could discuss the merits of their cases over the telephone with the judge.

9. At least six of the ten defendants who were present in court on the evening of August 24, 1977, and who heard the announcement by respondent's wife and observed the reduction of charges and the collection of fines by respondent's wife, believed that respondent's wife was setting fines and reducing charges on her own authority as though she were an acting judge.

10. Respondent acknowledged to the Commission (i) that his actions created an appearance of impropriety in that members of the public in his court on the evening of August 24, 1977, might reasonably have concluded that respondent's wife was acting as a judge in his place and (ii) that the telephone discussion between respondent and the assistant district attorney, as to plea bargaining, was improper.

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

With respect to Charges II and III:

11. On November 26, 1977, criminal charges were filed in respondent's court returnable December 7, 1977, against Walter

Boleski, charging Mr. Boleski with "Taking A Wild Deer Without Antlers During The Open Season."

12. Mr. Boleski's wife is related to respondent's wife by consanguinity in that Mr. Boleski's wife and respondent's wife are first cousins.

13. Respondent granted adjournments in the Boleski case on December 7, 1977, December 28, 1977, and January 11, 1978, during which time settlement by way of civil compromise was discussed among the defendant, his attorney and representatives of the Environmental Conservation Department. Respondent was aware that settlement discussions were taking place but he did not participate in them.

14. On December 8, 1977, respondent asked his wife to call the defendant's wife, "as a courtesy," to encourage the defendant and the defendant's wife to discuss the case ex parte with respondent if they so wished. Respondent's wife thereafter telephoned and spoke with Mrs. Boleski in accordance with respondent's instructions.

15. On January 18, 1978, the parties informed respondent that they had reached a civil compromise requiring the defendant to pay \$300. Respondent recorded the settlement in his civil docket and dismissed the criminal action against the defendant "in the interest of justice."

16. Respondent acknowledged to the Commission that it was improper (i) not to have disqualified himself immediately from the case and (ii) to have encouraged ex parte communication by the defendant and the defendant's wife.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 33.1, 33.2, 33.3(a)(1), 33.3(a)(4), 33.3(c)(1)(i) and 33.3(c)(1)(iv)(a) of the Rules Governing Judicial Conduct and Canons 1, 2, 3A(1), 3C(1)(a) and 3C(1)(d)(i) of the Code of Judicial Conduct. Charges II and III of the Formal Written Complaint are sustained, and respondent's misconduct is established.

With respect to Charge IV:

17. On the evening of January 11, 1978, while presiding in court, respondent became irritated at a remark made by Donald Carola, an attorney representing a client in a case before respondent. After Mr. Carola left the courtroom, respondent excused himself from the bench, followed Mr. Carola to a parking lot outside the courthouse and said to Mr. Carola, "Look, I am only going to tell you once, I don't need any more of your smart remarks in this court and it better not happen again." Mr. Carola thereupon became very angry and he and respondent argued for approximately five minutes.

18. Respondent acknowledged to the Commission that it was improper to have left the bench during a session of court to engage in an argument with one of the attorneys appearing in a case in that court.

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

With respect to Charge I, by directing his wife to conduct business of the court in his absence, in the manner set forth above, respondent created the appearance of improperly having delegated his adjudicatory responsibilities to his wife. By noting in advance of any hearing the amounts of the fines to be collected by his wife in ten traffic cases, respondent appeared to have pre-judged the merits of the cases and to have set fines without regard to the rights of the defendants to be heard. By engaging in an ex parte communication with the assistant district attorney as to three of those ten traffic cases, respondent violated that section of the Rules Governing Judicial Conduct which prohibits such communications (Section 33.3 [a][4]).

With respect to Charges II and III, by presiding over a criminal matter in which his wife was related by consanguinity to the defendant's wife, and by encouraging ex parte communication by the defendant, respondent violated those provisions of the Rules Governing Judicial Conduct (i) which require disqualification when a judge or his spouse is related to a defendant or his spouse within the sixth degree of consanguinity or affinity (Section 33.3[c][1][iv] [a]), and (ii) which prohibit a judge from initiating or considering ex parte communications concerning a pending proceeding, except as authorized by law (Section 33.3[a][4]).

With respect to Charge IV, by leaving the bench during a session of the court to argue with an attorney outside the courthouse, respondent failed in his obligations to maintain order in proceedings before him and to be patient and dignified toward one with whom he deals in his official capacity (Sections 33.3[a][3] and [4] of the Rules).

In determining the appropriate sanction, the Commission has considered the varied nature of the misconduct and the cumulative effect it will have both on public confidence in the integrity of respondent's court and on respondent's fitness to serve. The Commission has also considered that in 1976 the Appellate Division, Third Department, censured respondent for sentencing a defendant whom "he believed to be involved in a prior incident of a personal nature" involving respondent and for threatening "to deal personally with said defendant if a future incident should occur involving respondent's family." Matter of Hopeck, 54 AD2d 35 (3d Dept 1976).

Had the Constitution provided for suspension from office as a sanction, the Commission would have done so in this case. Suspension would have impressed upon respondent the severity with which we view his conduct while affording him an opportunity to reflect on his conduct before returning to the bench. Absent such option, the Commission determines that respondent should be severely censured.

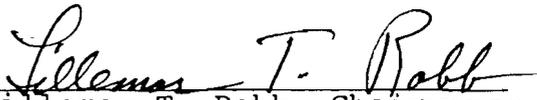
All concur, except (i) Mr. Kirsch dissents as to Charge I and votes to dismiss the charge and (ii) Judge Alexander, Mr. Bromberg, Mrs. DelBello, Mr. Maggipinto and Judge Shea dissent only with respect to sanction and vote that the appropriate sanction is removal from office.

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: August 15, 1980
Albany, New York


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