

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

ROBERT M. JACON,

a Justice of the East Greenbush Town
Court, Rensselaer County.

Determination

THE COMMISSION:

Mrs. Gene Robb, Chairwoman
Honorable Fritz W. Alexander, II
John J. Bower, Esq.
David Bromberg, Esq.
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 (John J. Postel and Henry S. Stewart,
Of Counsel) for the Commission

Jack J. Pivar for Respondent

The respondent, Robert M. Jacon, a justice of the East Greenbush Town Court, Rensselaer County, was served with a Formal Written Complaint dated December 7, 1982, alleging that he presided over a case involving a client of his private law practice. Respondent filed an answer dated January 7, 1983.

By order dated February 10, 1983, the Commission designated the Honorable James A. O'Connor as referee to hear and report proposed findings of fact and conclusions of law. The hearing was held on April 14, 1983, and the referee filed his report with the Commission on August 23, 1983.

By motion dated September 15, 1983, the administrator of the Commission moved to confirm in part and disaffirm in part the referee's report, to adopt additional findings of fact and conclusions of law and for a determination that respondent be censured. Respondent moved on October 3, 1983, to confirm the referee's report and to dismiss the Formal Written Complaint. The administrator submitted a reply to respondent's motion on October 6, 1983. The Commission heard oral argument on the motions on October 13, 1983, at which respondent and his counsel appeared, and thereafter considered the record of the proceeding and made the following findings of fact.

1. Respondent is a part-time justice of the East Greenbush Town Court and has been since January 1978.

2. Respondent is also an attorney who has a private law practice in East Greenbush.

3. Patrick Trexler was a client of respondent from 1974 to 1982.

4. On May 20, 1980, Mr. Trexler was arrested on a charge of disorderly conduct in the Town of East Greenbush as the result of a domestic disturbance in which he was alleged to have been drinking.

5. The case was scheduled for respondent's court on June 5, 1980.

6. Sometime before June 5, 1980, respondent learned of the case and told Mr. Trexler not to appear in court. Respondent told Mr. Trexler that he would see what disposition of the case the arresting officer, Sergeant Robert N. Kroll, would like.

7. The case was called in respondent's court on June 5, 1980. Sergeant Kroll was present in the courtroom. Mr. Trexler was not.

8. Respondent engaged in an ex parte discussion with Sergeant Kroll in which the police officer described the case as "junk" and indicated that, as the officer designated by the district attorney to prosecute the case, he would agree to an adjournment in contemplation of dismissal as an appropriate disposition.

9. Respondent adjourned the case in contemplation of dismissal and assured Sergeant Kroll that he would speak with Mr. Trexler about his drinking habits.

10. Respondent did not inform Sergeant Kroll that Mr. Trexler was a longstanding client of his private law practice.

11. At no time did respondent disqualify himself and transfer the case to another judge.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 100.1, 100.2, 100.3(a)(1), 100.3(a)(4) and 100.3(c)(1) of the Rules Governing Judicial Conduct and Canons 1, 2A, 3A(1), 3A(4) and 3C(1) of the Code of Judicial Conduct. The charge in the Formal Written Complaint is sustained, and respondent's misconduct is established. Respondent's motion to dismiss is denied.

Respondent acted as both judge and attorney in handling the Trexler matter. He presided over the case and disposed of it in his judicial capacity, and at the same time he counseled the defendant and negotiated a disposition as defense counsel. Although respondent is permitted to practice law, he is required to distinguish scrupulously his judicial function from his role as advocate. A judge may not sit as a neutral and impartial arbiter and, in the same case, represent one of the parties. To do so, creates an appearance of favoritism.

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

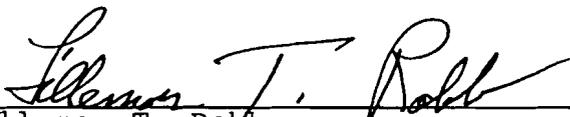
Mrs. Robb, Judge Alexander, Mr. Bromberg, Mrs. DelBello, Mr. Kovner, Judge Rubin and Mr. Sheehy concur.

Mr. Bower, Mr. Cleary, Judge Ostrowski and Judge Shea dissent as to sanction only and vote that the appropriate disposition would be a letter of dismissal and caution.

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 28, 1983



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

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DISSENTING OPINION BY
JUDGE OSTROWSKI IN WHICH
MR. BOWER, MR. CLEARY AND
JUDGE SHEA JOIN

The genesis of this proceeding was a noisy argument between former spouses in the home of the ex-wife to which the father of their child had gone to babysit. A neighbor called the police. An officer asked the father to step outside and then arrested him for disorderly conduct. No one in the home wanted the police or called the police. No accusatory instrument or supporting deposition was ever executed by anyone in the home. There is nothing to indicate that anyone other than a single neighbor and the arresting officer heard the argument.

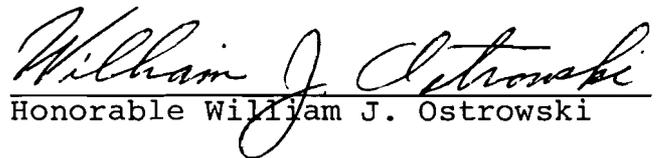
On this record, there does not appear to be even the semblance of a prima facie case of disorderly conduct. People v. Munafo, 50 NY2d 326, and particularly People v. Canner and People v. Chesnick, cited therein. Hence, the proceeding should have been terminated by dismissal of the accusatory instrument pursuant to Section 170.35(a) of the Criminal Procedure Law, by the granting of a trial order of dismissal pursuant to Section 290.10, Criminal Procedure Law, or by acquittal.

Rather than the total vindication the defendant seems to have been entitled to, there was an adjournment in contemplation of dismissal pursuant to Section 170.55 of the Criminal Procedure Law. Hence, what this case involves is an accusation of an offense of less than misdemeanor grade which was baseless and which should never have been made.

The only reason the case is before the Commission is that the defendant was a client of the judge who is also a practicing lawyer. But the judge was well aware of his obligation to disqualify himself and, in open court, announced his intention to transfer the case to another judge at which point the arresting officer described the charge as "junk" and suggested an adjournment in contemplation of dismissal, which the court granted.

The respondent acknowledges that he should not have participated in the case. There is nothing in the record to suggest that this is anything other than an isolated occurrence. The underlying charge was petty and groundless. The Commission's referee concluded that there was no misconduct. All of the circumstances point to a letter of dismissal and caution as the appropriate disposition pursuant to 22 NYCRR 7000.7(c), rather than public admonition.

Dated: November 28, 1983


Honorable William J. Ostrowski