

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

JEFFREY P. LA MOUNTAIN,

a Justice of the Keeseville Village
Court, Essex 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 (Cathleen S. Cenci, Of Counsel) for the
Commission

William E. Russell for Respondent

The respondent, Jeffrey P. La Mountain, a justice of
the Keeseville Village Court, Essex County, was served with a
Formal Written Complaint dated January 19, 1988, alleging that
he failed to disqualify himself, engaged in ex parte

communications and conveyed the impression of bias in a small claims case. Respondent filed an answer dated January 28, 1988.

By order dated February 25, 1988, the Commission designated Joseph J. Tabacco, Jr., Esq.; as referee to hear and report proposed findings of fact and conclusions of law. A hearing was held on May 4 and 24, 1988, and the referee filed his report with the Commission on September 15, 1988.

By motion dated October 18, 1988, the administrator of the Commission moved to confirm the referee's report and for a finding that respondent be censured. Respondent opposed the motion on November 8, 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.

1. Respondent has been a part-time justice of the Keeseville Village Court since March 1, 1986. He has no court clerk. Respondent also works as a delivery driver for the Pepsi-Cola Bottling Company plant in Keeseville.

2. Richard C. Thomas, Jr., is also a driver for the plant. His father, Richard C. Thomas, Sr., is sales manager of the plant and one of respondent's superiors but is not his immediate supervisor.

3. In September 1986, the junior Mr. Thomas had a conversation with respondent at the plant concerning a housing matter. Mr. Thomas complained that his landlord had refused to return a security deposit after Mr. Thomas had vacated the apartment.

4. Respondent advised Mr. Thomas to bring his rent receipts and any other paperwork concerning the apartment to court for respondent to examine.

5. On September 15, 1986, Mr. Thomas brought the paperwork to respondent after an evening session of court. No one else was present. Mr. Thomas also produced a sheet containing calculations of payments which was drawn by him and his wife, Lauri J. Thomas, who had signed the lease for the apartment. The sheet contained a dollar amount which the Thomases claimed was owed them by the landlord, G. Arthur Bailey.

6. Respondent reviewed the lease agreement, bills, receipts and other records furnished by Mr. Thomas in order to substantiate the figures he and his wife had calculated. Respondent put correction fluid on the sheet in several spots where Mr. Thomas had crossed out figures, and respondent made some of his own notations. Based on information provided by Mr. Thomas, respondent wrote: "Plus credit for services rendered by tenant \$35.00," "\$100.00 sec. deposit; tenant to recieve [sic] back upon leaving," and "Total owed to tenant \$287.85."

7. Respondent testified in this proceeding on May 24, 1988, that this procedure was necessary "because I'd like to have proof before I go sending out any summons that there's actually a claim that he can bring against him."

8. Respondent kept the original sheet of calculations that he and Mr. Thomas had prepared and the supporting documents.

9. Respondent then issued a notice of small claim to Mr. Bailey on behalf of Ms. Thomas, noting that the claim was in the amount of \$287.85 for "money owed for over-payment of rent." He set a hearing for October 1, 1986.

10. Mr. Bailey replied by letter of September 17, 1986, to respondent. Mr. Bailey questioned the validity of a rent receipt and asserted a counterclaim of \$392.32. Respondent reviewed the letter prior to the hearing and retained it in his file of the case.

11. On October 1, 1986, respondent conducted a hearing in Thomas v. Bailey. Mr. Thomas appeared on his wife's behalf. Mr. Bailey represented himself.

12. Respondent did not disclose to Mr. Bailey that he had met privately with Mr. Thomas to review his records and to assist him in calculating the amount claimed. Respondent did not furnish Mr. Bailey with a copy of the records he had examined or the calculations he had helped prepare.

13. Testimony at the hearing centered on the validity of one rent receipt. Respondent heard no evidence with respect to Mr. Bailey's counterclaim.

14. Respondent found the receipt to be valid and awarded judgment to Ms. Thomas in the amount of \$287.85. He based his decision on the records and calculations he had examined in the ex parte meeting with Mr. Thomas.

15. On December 4, 1986, respondent signed a judgment for \$287.85 in favor of Ms. Thomas.

16. Between January 16 and January 26, 1987, Mr. Bailey sent respondent a letter and documents that he maintained supported his counterclaim against Ms. Thomas. Mr. Bailey asked respondent to transfer the matter to another judge in view of the fact that respondent and Mr. Thomas work together.

17. Respondent replied by letter of January 26, 1987. He told Mr. Bailey that he could only bring an appeal or a counterclaim after the judgment was paid. Respondent also asserted that he would only transfer the matter after the judgment was paid. Respondent also stated in the letter:

I have received numerous complaints from more than one of your tenants on the way you operate as a landlord. Myself and the village are becoming tired of them. If these complaints persist, I will find it necessary to go and inspect your apartmenthouses [sic] myself with [the code enforcement officer] and then turn in a report to the county and my recommendations as to what should be done.

18. There were no other pending matters in respondent's court regarding Mr. Bailey at the time of respondent's letter.

19. On March 23, 1987, Mr. Bailey paid the judgment.

20. On April 29, 1987, Mr. Bailey again wrote to respondent and asked that his counterclaim be transferred to another judge. Respondent typed and signed a note on the bottom of the letter, advising Mr. Bailey to see AuSable Town Justice Kenneth E. Beane.

21. On May 27, 1987, Mr. Bailey's secretary, on his behalf, attempted to file several small claims with respondent. Respondent told the secretary that he and Mr. Bailey "did not see eye to eye," that respondent was "not real crazy about Mr. Bailey" and that he and Mr. Bailey did not "get along." Respondent refused to accept the claims and said that he would speak to another judge about handling them.

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) and 100.3(a)(4) of the Rules Governing Judicial Conduct and Canons 1, 2, 3A(1) and 3A(4) of the Code of Judicial Conduct. The charge in the Formal Written Complaint is sustained insofar as it is consistent with the findings herein, and respondent's misconduct is established.

Respondent conducted an ex parte meeting with one party to a dispute in which he reviewed evidence and helped the party formulate his claim and marshal his proof. Respondent later rendered his decision based on the information he had obtained in that meeting without disclosing to the other party that it had taken place and without allowing the other party to review and rebut the proof. Such conduct clearly violates Section 100.3(a)(4) of the Rules Governing Judicial Conduct.

Since he has no court clerk, it sometimes may be necessary for respondent to assist litigants in formulating claims and preparing notices of claims. In the Thomas case, he went far beyond such ministerial duties, however. Mr. Thomas had already formulated his claim when he came to see respondent and had calculated a dollar amount which he maintained was owed by Mr. Bailey. Nothing was required of respondent beyond filling out a simple notice of claim form. Instead, respondent reviewed Mr. Thomas' documents and determined the accuracy of his calculations on the spot and outside the presence of Mr. Bailey, thereby abandoning his proper role as an independent and impartial judge. Matter of Mullen, 1987 Annual Report 129, 132 (Com. on Jud. Conduct, May 22, 1986). See also Matter of Cooksey, 1988 Annual Report 151 (Com. on Jud. Conduct, Oct. 27, 1987); Matter of Wilkins, 1986 Annual Report 173 (Com. on Jud. Conduct, Dec. 24, 1985).

Respondent exacerbated this misconduct by his actions after the hearing. He told Mr. Bailey that a counterclaim or an appeal could not be brought until the judgment had been paid; he wrote a letter referring to extra-judicial complaints by tenants and threatened action against Mr. Bailey; and, he admitted hostility in a conversation with Mr. Bailey's secretary. In doing so, respondent's actions, taken as a whole, created the impression of bias. The ability to be impartial and appear impartial is an indispensable requirement for a judge. Matter of Sardino v. State Commission on Judicial Conduct, 58 NY2d 286, 290 (1983).

We do not find that respondent was required to disqualify himself from the Thomas case because of his working relationship with Mr. Thomas and his father. He was required to disclose the relationship, however. By failing to disclose the relationship and hear any objections to his presiding, respondent contributed to the appearance of partiality conveyed by his other actions in the case. Matter of Winick, 1988 Annual Report 239 (Com. on Jud. Conduct, Jan. 29, 1987); Matter of Merkel, unreported (Com. on Jud. Conduct, May 19, 1988).

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

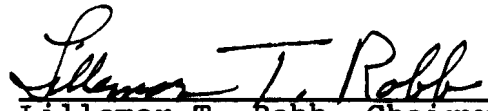
Mrs. Robb, Judge Altman, Mr. Berger, Mr. Bower, Judge Ciparick, Mr. Cleary, Mrs. DelBello, Mr. Kovner, Judge Ostrowski and Mr. Sheehy concur.

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 23, 1988


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