

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

JAMES R. LENNEY,

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

The respondent, James R. Lenney, a justice of the
Herkimer Village Court, Herkimer County, was served with a
Formal Written Complaint dated December 3, 1986, alleging that
he neglected his judicial duties and failed to cooperate with
the Commission. Respondent did not answer the Formal Written
Complaint.

By motion dated February 19, 1987, the administrator of the Commission moved for summary determination and a finding that respondent's misconduct be deemed established. Respondent did not oppose the motion or file any papers in response thereto. By determination and order dated March 18, 1987, the Commission granted the administrator's motion and found respondent's misconduct established.

The administrator filed a memorandum as to sanction. Respondent neither filed any papers nor appeared for oral argument.

On April 14, 1987, the Commission considered the record of the proceeding and thereafter made the following findings of fact.

As to Charge I of the Formal Written Complaint:

1. Respondent is a justice of the Herkimer Village Court and has been since 1974.

2. Since June 1981, respondent has failed to diligently discharge his administrative and adjudicative responsibilities in 35 criminal cases and six civil cases, as denominated in Schedule A of the Formal Written Complaint, with the result that the matters remained pending in his court for between 10 and 59 months.

3. Respondent failed to schedule or delayed in scheduling for trial 26 of the 35 criminal cases.

4. After scheduling 30 of the 35 cases for trial, respondent repeatedly permitted the cases to be adjourned because attorneys or defendants failed to appear. Respondent failed to take legal remedies available to him to compel their appearance and, thereby, established a system in which attorneys or defendants could delay cases and avoid the consequences of disposition simply by failing to appear in court.

5. In 16 of the 35 cases, respondent failed to issue bench warrants, failed to remit forfeited bail to the State Comptroller or failed to suspend defendants' licenses, as required by Sections 420.10(3), 530.70 and 540.10 of the Criminal Procedure Law, Section 4-410(1)(b) of the Village Law and Section 510.4-a of the Vehicle and Traffic Law, when the defendants failed to appear in court to pay fines or restitution imposed by the court.

6. In five of the 35 cases, respondent failed to transmit felony cases to the county court or grand jury or otherwise properly dispose of them, as required by Section 180.30, 180.50 and 180.70 of the Criminal Procedure Law.

7. In all of the 35 criminal cases, respondent failed to maintain complete and accurate records and dockets, as required by Sections 2019 and 2019-a of the Uniform Justice Court Act.

8. In five small claims cases, respondent failed to schedule trials or delayed in scheduling trials, as denominated in Schedule A of the Formal Written Complaint.

9. In two civil cases, respondent failed to render judgment within 30 days from the time the matters were submitted to him, as required by Section 1304 of the Uniform Justice Court Act.

As to Charge II of the Formal Written Complaint:

10. In February 1981, Ferrari v. Barone, a small claims case, was filed in respondent's court. A hearing was held before respondent on February 24, 1981.

11. On April 15, 1981, the plaintiff's attorney requested that the matter be transferred to the civil calendar of respondent's court, and respondent granted the request.

12. On September 11, 1981, the plaintiff's attorney, Thomas C. Walsh, requested that the matter be scheduled for trial as soon as possible.

13. On October 12, 1981, Mr. Walsh again asked that the matter be scheduled. Respondent replied on October 14, 1981, by suggesting that the attorneys agree on a date and notify him.

14. On October 21, 1981, Mr. Walsh proposed November 3, 1981, as a date for the trial. Respondent scheduled it for November 11, 1981, but adjourned it at the request of the defendant's attorney, George F. Aney. No new date was set.

15. On March 17, 1982, respondent wrote the attorneys, inquiring as to the status of the case.

16. On April 14, 1982, Terrence M. Walsh, on behalf of the plaintiff, wrote to respondent and requested that a trial date be set and that "no further adjournments be granted, so that this matter can finally be resolved."

17. On June 4, 1982, Mr. Walsh again requested a trial date. Respondent replied on June 6, 1982, and again suggested that the attorneys agree on a date.

18. One year later, on June 6, 1983, respondent wrote to the attorneys, inquiring as to the status of the case.

19. On October 25, 1983, respondent scheduled the matter for trial on November 10, 1983. The trial was held on that date.

20. On March 6, 1984, Mr. Walsh wrote to respondent, requesting a decision in the case.

21. On March 14, 1984, more than three years after the case was filed, respondent rendered a decision, finding for the plaintiff in the amount of \$325 plus costs.

22. On November 19, 1984, Deborah Ferro DiMezza, on behalf of the plaintiff, requested a certified transcript of judgment. Ms. DiMezza received no response.

23. On April 24, 1985, Ms. DiMezza made a second request and again received no response.

24. On October 2, 1985, Ms. DiMezza called respondent by telephone and asked for the transcript of judgment. Respondent said that he would look into the matter and get back to her.

25. Ms. DiMezza received no response. On October 16, 1985, she wrote to respondent again, requesting the transcript of judgment and enclosing a check for the fee.

26. When respondent did not reply, Ms. DiMezza filed a complaint with the Commission on November 13, 1985.

27. Respondent was served with a copy of Ms. DiMezza's complaint and was asked to testify before a member of the Commission on May 13, 1986. Respondent did not forward the transcript of judgment upon receipt of Ms. DiMezza's complaint.

28. On June 6, 1986, after his appearance before a member of the Commission, respondent furnished Ms. DiMezza with the transcript of judgment but erroneously listed the amount of damages as \$281.49, instead of the \$325 he had awarded in his decision.

29. On July 2, 1986, Ms. DiMezza requested a corrected transcript of judgment.

30. As of January 30, 1987, nearly six years after the claim was filed, Ms. DiMezza had not received the corrected transcript of judgment.

As to Charge III of the Formal Written Complaint:

31. From June 1984 to July 1986, respondent failed to report and remit court funds to the State Comptroller within ten days of the month following collection, as required by Section 2021(1) of the Uniform Justice Court Act, Section 4-410(1)(b) of the Village Law and Section 1803 of the Vehicle and Traffic Law.

As to Charge IV of the Formal Written Complaint:

32. Respondent failed to cooperate with the Commission in that he failed to respond to letters dated June 20, July 9, July 22, and September 17, 1986, from Commission staff, requesting information in connection with a duly-authorized investigation.

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)(5) and 100.3(b)(1) of the Rules Governing Judicial Conduct and Canons 1, 2, 3A(1), 3A(5) and 3B(1) of the Code of Judicial Conduct. Charges I through IV of the Formal Written Complaint are sustained, and respondent's misconduct is established.

Respondent has engaged in a persistent and pervasive pattern of neglect of his judicial and administrative duties. Because he permitted lawyers and litigants to continually adjourn cases, simple criminal, traffic and small claims matters took years to conclude.

Nowhere was this more evident than in the Ferrari v. Barone case, a claim for \$325 in damages. It took respondent two years and nine months to get the case on his trial calendar. It took four months for him to render a decision. It took more than two years and a Commission investigation before respondent issued a flawed transcript of judgment. Despite a written request and his knowledge of the Commission's interest in the case, respondent did not correct the judgment in the next seven months. The result of these continued delays was that in six years before respondent's court, the plaintiff was unable to collect on this small claim.

Such egregious neglect and repeated disregard of statutory requirements constitute serious misconduct and impair public confidence in the proper administration of justice. Matter of Cooley v. State Commission on Judicial Conduct, 53 NY2d 64 (1981); Matter of Petrie v. State Commission on Judicial Conduct, 54 NY2d 807 (1981).

Respondent's misconduct is compounded by his failure after he knew of the Commission's inquiry to conclude the Ferrari v. Barone case, which had initiated the investigation.

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.

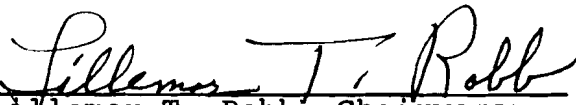
Mrs. Robb, Mr. Bromberg, Judge Ciparick, Mr. Cleary, Mrs. DelBello, Mr. Kovner, Judge Ostrowski, Judge Rubin, Judge Shea and Mr. Sheehy concur.

Mr. Bower 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: June 23, 1987


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