

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

J. DAVID LITTLE,

a Justice of the Queensbury
Town Court, Warren 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

Thomas J. McDonough for Respondent

The respondent, J. David Little, a justice of the
Queensbury Town Court, Warren County, was served with a Formal
Written Complaint dated October 28, 1986, alleging that he
improperly handled a housing matter and that he granted special

consideration in another case. Respondent filed an answer dated December 5, 1986.

By order dated December 12, 1986, the Commission designated Peter Preiser, Esq., as referee to hear and report proposed findings of fact and conclusions of law. A hearing was held on February 27 and March 3, 1987, and the referee filed his report with the Commission on July 6, 1987.

By motion dated August 27, 1987, 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 September 15, 1987. The administrator filed a reply on September 28, 1987.

On October 23, 1987, the Commission heard oral argument, at which respondent and his counsel appeared, and thereafter considered the record of the proceeding and made the following findings of fact.

Preliminary findings:

1. Respondent is a justice of the Queensbury Town Court and has been continuously since 1974. He also served an appointed term in 1970.
2. Respondent, a part-time judge, also practices law in the firm of Little & O'Connor and has since 1972.
3. Since the 1970s, respondent's law firm has represented Home and City Savings Bank in real estate closings.

4. William L. Potvin is vice president and branch manager of the bank and has been for more than 30 years. Mr. Potvin does not employ counsel for the bank but is responsible for administering loans and closings.

5. Respondent's law partner, Michael J. O'Connor, handles most of the firm's business with the bank and speaks with Mr. Potvin weekly. Respondent occasionally handles the bank's business when his partner is unavailable. He speaks with Mr. Potvin about once a month.

6. Mr. Potvin is also vice president and one of three shareholders in Homestead Village, Inc., a trailer park.

As to Charge I of the Formal Written Complaint:

7. On September 9, 1985, respondent presided over Homestead Village, Inc. v. Terry Pratt, a summary proceeding to recover possession of real property for non-payment of rent.

8. The petition initiating the proceeding was signed by Mr. Potvin, and respondent was aware that he was a principal in the corporation.

9. Mr. Pratt, a tenant of the trailer park, appeared without an attorney. The corporation was represented by Debra Greenough, manager of the trailer park. Ms. Greenough is not a lawyer. Respondent did not require that the corporation appear by an attorney, as required by Section 321(a) of the Civil Practice Law and Rules.

10. No witnesses were sworn, and no testimony was taken. Mr. Pratt and Ms. Greenough agreed that \$90 was owed the corporation. Mr. Pratt agreed to pay the \$90 and vacate the premises by January 1, 1986, in settlement of the dispute.

11. On September 11, 1985, respondent found on his desk a warrant of eviction prepared by Ms. Greenough and delivered to respondent's chambers by his court clerk. Respondent signed the warrant of eviction, notwithstanding that no court hearing had taken place and that no judgment had been entered by the court, as required by Section 749 of the Real Property Actions and Proceedings Law.

12. The warrant was subsequently served on Mr. Pratt, and he moved from the trailer park pursuant to an agreement between the parties.

As to Charge II of the Formal Written Complaint:

13. In August 1985, Mr. Potvin called respondent at his law office and asked him to reduce a traffic ticket that Mr. Potvin's daughter, Lianne, had received as the result of an automobile accident. Mr. Potvin told respondent that he was concerned that insurance premiums on the car would be raised as a result of a conviction of the offense charged, Unsafe Lane Change.

14. Respondent agreed to reduce the charge to a parking violation, Parking On The Pavement. Respondent told

Mr. Potvin to have his daughter plead guilty by signing the back of the ticket and to send a \$100 fine to the court.

15. At the time of the conversation with Mr. Potvin, respondent had no knowledge as to whether Ms. Potvin's case was scheduled to come before him or the other judge of the court.

16. When respondent received the ticket, he reduced the charge as promised and noted the reduction on the face of the ticket, notwithstanding that Section 1805(e) of the Vehicle and Traffic Law permits a guilty plea by mail to be made only to the offense charged.

17. Respondent did not obtain the consent of any prosecuting authority before reducing the charge, as required by Sections 220.10(3) and 340.20 of the Criminal Procedure Law.

18. Respondent testified in this proceeding that it is his practice to grant such requests when made by "a person of integrity." If respondent does not know the person making the request, he would ascertain the circumstances of the arrest from the arresting officer, respondent testified.

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)(4) and 100.3(c) of the Rules Governing Judicial Conduct and Canons 1, 2, 3A(4) and 3C of the Code of Judicial Conduct. Charges I and II of the Formal Written Complaint are sustained insofar as they are consistent with the

findings enumerated herein, and respondent's misconduct is established.

Respondent was required to disqualify himself from the Pratt case because of his law firm's connection with Mr. Potvin. A reasonable person might question respondent's ability to be impartial in a case in which a principal of the corporate plaintiff was also an officer of a long-standing client of respondent's law firm. See Section 100.3(c) of the Rules Governing Judicial Conduct.

Respondent's errors of law in handling the Pratt case contributed to the appearance of partiality. He allowed the corporate plaintiff to be represented by a non-attorney, and, more significantly, he signed a warrant of eviction without a legal basis to do so. By respondent's own testimony, the proceeding before him concluded with a settlement. No hearing or decision was rendered by the court. No judgment was entered upon which to base a warrant of eviction, as required by law. By issuing such a warrant without a hearing to determine the rights and liabilities of the parties or that there was evidence that the settlement had been abrogated, respondent failed to comply with the law and denied the parties full right to be heard.

By granting a reduction in the Leanne Potvin case based on an ex parte request from the defendant's father,

respondent engaged in malum in se misconduct. Such favoritism is wrong and has always been wrong. Matter of Reedy v. State Commission on Judicial Conduct, 64 NY2d 299 (1985); Matter of Conti v. State Commission on Judicial Conduct, ____ NY2d ____, No. 254 (Oct. 22, 1987); Matter of Byrne, 47 NY2d(b) (Ct. on the Judiciary 1978).

Respondent's testimony that he routinely grants such requests when made by "persons of integrity" illustrates that he administered a dual system of justice. Those that were known to him could get favored treatment that others could not.

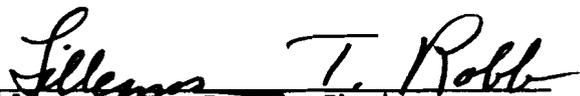
By reason of the foregoing, the Commission determines that the appropriate sanction is censure.

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 19, 1987


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