

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

JOHN MAHAR,

a Justice of the Town Court of
Hoosick, Rensselaer County.

Determination

BEFORE: Mrs. Gene Robb, Chairwoman
Honorable Fritz W. Alexander, II
John J. Bower, Esq.
E. Garrett Cleary, Esq.
Dolores DelBello
Victor A. Kovner, Esq.
Honorable William J. Ostrowski
Honorable Felice K. Shea
Carroll L. Wainwright, Jr., Esq.

APPEARANCES:

Gerald Stern (Albert B. Lawrence, Of
Counsel) for the Commission

John Mahar, Respondent Pro Se

The respondent, John Mahar, a justice of the Town Court of Hoosick, Rensselaer County, was served with a Formal Written Complaint dated November 4, 1981, alleging inter alia that he threatened an attorney who had lodged a complaint against him with this Commission. Respondent filed an answer dated January 9, 1982.

The Commission designated Bernard H. Goldstein, Esq., referee to hear and report proposed findings of fact and conclusions

of law. The hearing was held on January 22, 1982. The referee filed his report with the Commission on March 15, 1982.

By motion dated March 26, 1982, the administrator of the Commission moved to confirm the referee's report and for a determination that respondent be removed from office. Respondent opposed the motion by letter dated April 6, 1982. Oral argument was waived.

The Commission considered the record of this proceeding on April 21, 1982, and made the following findings of fact.

As to Charge I of the Formal Written Complaint:

1. Rolf M. Sternberg is an attorney admitted to the practice of law in New York. In May 1979, Mr. Sternberg filed a written complaint and affidavit with the Commission concerning respondent.

2. On August 1, 1980, the Commission sent Mr. Sternberg's complaint and affidavit to respondent and asked for his comments with respect thereto. Respondent received the material on August 5, 1982.

3. On August 19, 1980, Mr. Sternberg appeared in the Hoosick Town Court on a matter presided over by respondent's co-justice. As he left the court, Mr. Sternberg was approached by respondent, who said he was "going to win" the matter before the Commission and was thereafter "going to get" Mr. Sternberg. Respondent's threat was motivated by his rancor at Mr. Sternberg for having filed the complaint with the Commission. In testimony

before the Commission during its investigation of this matter, respondent acknowledged that his conduct was improper.

As to Charge II of the Formal Written Complaint:

4. On May 4, 1981, in connection with a Commission proceeding concerning Mr. Sternberg's complaint against respondent, Commission attorney Stephen F. Downs sent to respondent's attorney the statements of witnesses who would testify at the proceeding. Among the statements sent on that date was one by Ralph Helft, who was scheduled to testify against respondent.

5. Wayne Weeden is respondent's next-door neighbor. He is also a bartender at "R's Tavern" in the Village of Hoosick Falls. Charges of burglary and possession of stolen property were pending against Mr. Weeden in Troy, New York, in 1981, arising from a tire-stealing incident in 1979.

6. On two occasions in May 1981, respondent asked Mr. Weeden to make a statement that would incriminate Mr. Helft in the tire-stealing matter. Respondent indicated to Mr. Weeden that he himself was in "some kind of trouble" and that, in return for such testimony, respondent would use his influence to clear Mr. Weeden's arrest records in Troy. Respondent told Mr. Weeden that he wanted to retaliate against Mr. Helft. Mr. Weeden subsequently testified that Mr. Helft was not involved in the tire-stealing incident.

As to Charge III of the Formal Written Complaint:

7. On July 18, 1981, respondent was notified by the Commission that his appearance and testimony were required with

respect to his conversations with Mr. Weeden.

8. On August 3, 1981, Mr. Weeden was at his job tending bar at R's Tavern. Respondent was drinking alcohol at the tavern over a period of two hours and was inebriated. In a loud voice that other patrons could hear, respondent repeatedly used vulgar language and called Mr. Weeden a liar. Respondent was known by other patrons to be a judge.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 33.1, 33.2(a) and 33.2(c) of the Rules Governing Judicial Conduct (now renumbered 100.1, 100.2[a] and 100.2[c]) and Canons 1, 2A and 2B of the Code of Judicial Conduct. Charges I through III of the Formal Written Complaint are sustained, except for that portion of Charge III that alleges that respondent threatened to "get even" with Mr. Weeden for testifying before the Commission, which is dismissed. Respondent's misconduct is established.

Respondent has demonstrated by his conduct that he is unfit to continue as a judge.

By encouraging a witness to make a false statement in a criminal matter, by offering the prestige of his office to help that witness in return, and by threatening an attorney who properly availed himself of judicial grievance procedures, respondent prejudiced the administration of justice and obstructed the very search for truth which our courts and judges are supposed to enhance. Such conduct warrants removal. See, Matter of Jones, 47 NY2d (mmm) (Ct. on the Judiciary 1979).

By allowing himself to become intoxicated in a public place where he was known to be a judge, by using vulgar language in a loud and offensive manner, and by repeatedly calling a witness against him a liar, respondent undermined public confidence in the integrity of the judiciary. See, Matter of Quinn, 54NY2d 386, 392 (1981), and Matter of Kuehnel, 49 NY2d 465 (1980).

By reason of the foregoing, the Commission determines that respondent should be removed from office.

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: (June 10, 1982)



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