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

DONALD G. MASNER,

a Justice of the Westmoreland Town Court, Oneida 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

Antonio Faga for Respondent

The respondent, Donald G. Masner, a justice of the Westmoreland Town Court, Oneida County, was served with a Formal Written Complaint dated September 28, 1987, alleging that he failed to perform his judicial duties in a dignified and impartial manner, engaged in a course of conduct prejudicial to

the administration of justice, failed to advise defendants charged with criminal conduct of basic due process rights and failed to perform the administrative and adjudicative duties of his office. Respondent filed an answer dated October 22, 1987.

By order dated March 3, 1988, the Commission designated the Honorable James C. O'Shea as referee to hear and report proposed findings of fact and conclusions of law. A hearing was held on April 25, 26 and 29, 1988, and the referee filed his report with the Commission on July 29, 1988.

By motion dated September 23, 1988, the administrator of the Commission moved to confirm the referee's report, to adopt additional findings of fact and for a finding that respondent be removed from office. Respondent opposed the motion on October 12, 1988. The administrator filed a reply on October 31, 1988.

On November 16, 1988, the Commission heard oral argument, at which respondent appeared by counsel, and thereafter considered the record of the proceeding and made the following findings of fact.

As to Charge I of the Formal Written Complaint:

1. Respondent has been a justice of the Westmoreland Town Court since January 1, 1976, and has attended all the

required training sessions sponsored by the Office of Court Administration.

2. On January 23, 1986, respondent arraigned Mary Jo Felice on two motor vehicle charges. Ms. Felice was represented by an attorney, Brian Miga.

3. Mr. Miga entered a plea of not guilty and requested a motion date.

4. Following Mr. Miga's request for a motion date, respondent sarcastically asked, "Why, do you want to get some more of this woman's money?"

5. On January 23, 1986, David S. Haddad, a used car dealer, appeared before respondent in response to a speeding ticket.

6. When Mr. Haddad requested an opportunity to explain his case prior to entering a plea, respondent stated, "Well, I heard them all before, but go ahead and amuse me."

7. Mr. Haddad attempted to explain that he was a registered dealer, but before he could go further, respondent interrupted and asked sarcastically, "In what, drugs?"

As to Charge II of the Formal Written Complaint:

8. It was respondent's custom to conduct a "pretrial hearing" whenever a plea of not guilty by mail was received by him.

9. The assistant district attorney assigned to respondent's court neither knew about nor attended these pretrial hearings. Respondent routinely sent form letters advising defendants of the prehearing practice, and although the letter indicated that he had the "mutual consent of the district attorney's office," neither the district attorney nor his assistants knew about the letter or consented to its use.

10. At the pretrial hearings, respondent asked defendants to give a statement as to their defense and thereupon respondent determined whether such defense warranted a trial. Frequently, respondent offered defendants reductions of the charge as an alternative to reappearing for trial.

11. Some defendants, believing the "pretrial hearing" was the trial date, pled guilty to a lesser charge rather than travel long distances back to respondent's court.

12. In several cases, respondent offered and granted reductions and adjournments in contemplation of dismissal without the knowledge or consent of the district attorney or his assistant.

13. After respondent granted an adjournment in contemplation of dismissal in People v. Gary Jones and People v. Daniel O'Neill, Assistant District Attorney William Weber telephoned respondent and told him that he should not have granted these dispositions without Mr. Weber's consent and requested that respondent reinstate the charges. Respondent did as requested.

14. Respondent frequently lowered the charged speed to less than 15 miles per hour over the posted limit in satisfaction of the speeding charge and frequently and erroneously advised defendants that their insurance rates would not be affected thereby.

15. In People v. Christopher Barley, respondent induced a guilty plea from the defendant, who had pled not guilty to speeding charges, by offering an unauthorized reduction.

16. In People v. Marilyn Bielby, People v. Phyllis Oleksy and People v. Karl Stewart, respondent convicted the defendants, even though they had not pled guilty to any charge nor had respondent offered the defendants any opportunity for trial.

17. In People v. Harold Moore and People v. Harold Robert Murphy, respondent improperly suspended the defendants' licenses, even though the defendants properly responded to the charges against them.

18. In People v. Christopher Barley, People v. Donna Geer and People v. Helen Setera, respondent improperly elicited incriminating facts from the defendants following their pleas of not guilty.

19. In People v. Christopher Barley, People v. Marilyn Bielby, People v. Chris Newmiller, People v. Helen Setera and People v. Rudolph Strasswimmer, respondent failed to

properly advise defendants of their rights, in violation of Section 170.10 of the Criminal Procedure Law.

20. In People v. Donna Geer, People v. Kevin Hinman and People v. Richard Moran, respondent offered or granted reductions in the charges without the knowledge or consent of the district attorney's office.

21. In People v. Chris Newmiller, respondent induced the defendant's guilty plea by offering a reduction in the charge despite the defendant's request for a trial. Respondent entered in his records a conviction to the same charge, Speeding, but at 55 miles per hour rather than the 65 miles per hour alleged.

22. In People v. Donna Geer, respondent failed to advise the defendant of her right to an attorney, to an adjournment to obtain an attorney or to a supporting deposition.

As to Charge III of the Formal Written Complaint:

23. On September 17, 1986, Marilyn Bielby, a 42 year-old mentally retarded person, was charged with Criminal Trespass, Third Degree, a misdemeanor.

24. Ms. Bielby's parents brought her to respondent's home, where respondent advised the Bielbys that the defendant was entitled to an attorney. However, respondent did not advise them of Ms. Bielby's right to have an attorney appointed if she

could not afford one, nor of Ms. Bielby's right to an adjournment to consult with an attorney. Moreover, a copy of the accusatory instrument was not furnished.

25. Neither the defendant nor her parents could afford an attorney.

26. It is doubtful that Ms. Bielby was aware of the charge against her.

27. Respondent did not ask Ms. Bielby for a plea, nor did she plead guilty. One of her parents acknowledged that she probably was guilty.

28. Respondent imposed a conditional discharge and a $60 surcharge, which the Bielbys paid.

29. Respondent failed to maintain adequate records of the case of People v. Marilyn Bielby, in violation of Section 30.9 of the Uniform Justice Court Rules then in effect, Section 214.11(1) of the Uniform Civil Rules for the Justice Courts and Sections 107, 2019 and 2019-a of the Uniform Justice Court Act. The only record of the case was a docket page.

As to Charge IV of the Formal Written Complaint:

30. On May 2, 1986, the defendant in People v. Rudolph Strasswimmer appeared in respondent's court for trial on a Speeding charge.

31. The defendant advised respondent that he was ready to proceed to trial.

32. With the defendant in an outside room, a conversation took place between respondent and the assistant district attorney. Respondent related to the ADA that the arresting officer was notified of the trial date but that the trooper had told respondent that he had no intention of appearing for the trial. The trooper had stated that he would be at home if respondent needed him.

33. Respondent told the ADA that it was the trooper's responsibility to be present and that if he did not appear, respondent would not telephone him.

34. The ADA stated that the Strasswimmer case was serious because the defendant was charged with Speeding at 85 miles per hour in a 55 mile-per-hour zone and that if the trooper failed to appear and the defendant requested a dismissal, the court should grant the motion.

35. Subsequently, Mr. Strasswimmer returned to respondent's chambers and again announced his readiness for trial, having pled not guilty.

36. Respondent offered Mr. Strasswimmer a reduction of the five-point violation to a three-point violation.

37. In response, the defendant stated that he had received such an offer in the mail and that it was unacceptable. He further stated that he wanted a trial because he felt he was innocent.

38. Thereupon, respondent stated that the officer was not present and that if the defendant wanted a trial, the court would have to adjourn the matter.

39. The defendant stated that the matter had been set down for trial and that if the officer was not present, respondent should dismiss the case. He further told respondent that he had driven four and a half hours from Yorktown Heights, that he had lost a day's wages and that it had cost him considerable money for gas.

40. Respondent refused to dismiss the case and restated his offer of a reduction.

41. When Mr. Strasswimmer repeated his request for a trial that evening, respondent again stated that if the defendant wanted a trial, it would have to be adjourned until a later date.

42. At one point during the exchange, the defendant became so upset and frustrated that he began to bang his head against a wall and then said that since he had no other choice but to plead guilty to the reduction, he would do so, although he felt that he was innocent of the Speeding charge.

43. A Mr. Pratt, an attorney who was present as a spectator, approached respondent and asked whether he could speak with Mr. Strasswimmer privately, to which respondent agreed.

44. After speaking with the defendant, Mr. Pratt repeated defendant's motion to dismiss the charge, and again respondent refused to grant the motion.

45. Subsequently, Mr. Pratt advised the defendant to plead guilty to the reduced charge, and the defendant reluctantly did so.

As to Charge V of the Formal Written Complaint:

46. Respondent failed to maintain complete and adequate motor vehicle dockets since November 1985, in violation of Section 105.3 of the Recordkeeping Requirements for Town and Village Courts then in effect and Sections 107, 2019 and 2019-a of the Uniform Justice Court Act.

47. The only record respondent kept of motor vehicle cases was the court copy of the traffic ticket.

48. Respondent did not fill out the backs of the tickets, notwithstanding that on the back of the court's copy of the traffic ticket there is room to enter the entire record of the proceeding. Respondent received and read the handbook instructing him in this respect.

49. Respondent failed to maintain case files, in violation of Section 105.1 of the Recordkeeping Requirements for Town and Village Courts and Section 30.9 of the Uniform Justice Court Rules then in effect, Section 214.11(1) of the Uniform

Civil Rules for the Justice Courts and Sections 107, 2019 and 2019-a of the Uniform Justice Court Act.

50. Respondent destroyed or discarded correspondence, supporting depositions and other court records kept in the normal course of business, in violation of Sections 104.1(e), 104.3 and 104.4 of the Rules of the Chief Administrator of the Courts and Section 89 of the Judiciary Law.

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)(3), 100.3(a)(4) and 100.3(b)(1) of the Rules Governing Judicial Conduct and Canons 1, 2, 3A(1), 3A(3), 3A(4) and 3B(1) of the Code of Judicial Conduct. Charges I through V of the Formal Written Complaint are sustained, and respondent's misconduct is established.

The facts reflect a sad, but compelling, example of a nonlawyer justice of a town court who is demonstrably unfit to hold judicial office. Respondent has held his judicial office for the past 12 years and has attended all the required training sessions sponsored by the Office of Court Administration. Regrettably, the record of this proceeding is barren of any evidence that these training sessions had their intended effect upon respondent.

Respondent engaged in a pattern of conduct during arraignment and other pretrial proceedings in criminal cases which evidenced a predisposition not only against the particular defendant appearing before him, but to defendants generally. Any judge who has convicted defendants without trial or plea, misinformed defendants of the consequences of a plea of guilty and formed conclusions on cases before him on the bases of matters not in the record violates the fundamental due process rights of the citizens of this State and must be removed from office. Matter of Sardino v. State Commission on Judicial Conduct, 58 NY2d 286 (1983). Further, respondent's conduct offended virtually every minimum standard of appropriate judicial conduct, including material ex parte communications, offensive and insulting demeanor, coercive tactics and failure to keep adequate records of cases in his court.

One particularly egregious example of respondent's incompetence and unfitness for judicial office involved his mistreatment of a mentally-retarded defendant appearing before him charged with a crime. In this instance, respondent, knowing the defendant was mentally retarded and that her parents were people of modest means, failed to inform the parents and their daughter of her right to an appointed attorney, failed to furnish a copy of the accusatory instrument, failed to explain the nature of the charge to them and found the incompetent defendant guilty on a wholly improper and unsubstantiated basis:

her parent's acknowledgment that the daughter might be guilty. This is an abuse of power which brings disrepute to the judiciary as a whole and destroys public confidence in the integrity of respondent's court. Matter of McGee v. State Commission on Judicial Conduct, 59 NY2d 870 (1983).

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

Mrs. Robb, Judge Altman, Mr. Berger, Mr. Bower, Judge Ciparick, Mr. Cleary, Mrs. Del Bello, 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: January 25, 1989

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