

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

ELTON MAXON,

a Justice of the Berlin Town
Court, Rensselaer 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 (Henry S. Stewart, Of Counsel) for the
Commission

Philip A. Lance for Respondent

The respondent, Elton Maxon, a justice of the Berlin
Town Court, Rensselaer County, was served with a Formal Written
Complaint dated October 19, 1984, alleging that he convicted a
defendant without a trial or any appearance by a prosecutor.
Respondent filed an answer dated November 19, 1984.

By order dated April 17, 1985, the Commission designated Bruno Colapietro, Esq., as referee to hear and report proposed findings of fact and conclusions of law. A hearing was held on May 22, 1985, and the referee filed his report with the Commission on August 29, 1985.

By motion dated October 16, 1985, the administrator of the Commission moved to confirm the referee's report and for a finding that respondent be censured. Respondent did not file any papers in response thereto and waived oral argument.

On November 14, 1985, the Commission considered the record of the proceeding and made the following findings of fact.

1. Respondent is a justice of the Berlin Town Court and was during the time herein noted.
2. On October 10, 1983, David A. McGrath was ticketed in the Town of Berlin on charges of Speeding and Failure to Produce An Insurance Card.
3. The tickets were returnable in respondent's court.
4. On October 14, 1983, Mr. McGrath pled not guilty by mail to the charges.
5. On October 19, 1983, respondent notified Mr. McGrath to appear for trial on November 2, 1983.
6. On November 2, 1983, Mr. McGrath appeared before respondent for trial.

7. Respondent dismissed the charge of Failure to Produce An Insurance Card after Mr. McGrath provided him with valid proof of insurance.

8. Mr. McGrath asked that the Speeding charge be dismissed on the grounds that no arresting officer or other prosecuting authority was present and no evidence had been presented against him.

9. Mr. McGrath was not provided with a deposition supporting the charge, and no sworn testimony was taken during the proceeding.

10. Mr. McGrath told respondent that he had not been speeding.

11. Respondent refused to dismiss the charge. He told Mr. McGrath that the arresting officer must have had some reason to issue the ticket.

12. Respondent found Mr. McGrath guilty of the Speeding charge and imposed a \$15 fine.

13. Respondent acknowledged that he felt that Mr. McGrath was guilty based solely on his personal knowledge of the road where Mr. McGrath was arrested and its reputation as a "speedway."

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 100.1, 100.2(a) and 100.3(a)(1) of the Rules Governing Judicial

Conduct and Canons 1, 2A and 3A(1) of the Code of Judicial Conduct. The charge in the Formal Written Complaint is sustained, and respondent's misconduct is established.

Respondent denied Mr. McGrath the right to be heard and compromised the impartiality of the court by accepting as truth over the denial of the defendant a police officer's charge without any substantiating evidence. Respondent failed to comply with the law by convicting and fining Mr. McGrath without a trial.

Such insensitivity to the proper role of a judge warrants public sanction. Matter of Curcio, 3 Commission Determinations 198 (Com. on Jud. Conduct, Mar. 1, 1983); Matter of Loper, unreported (Com. on Jud. Conduct, Jan. 25, 1984).

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

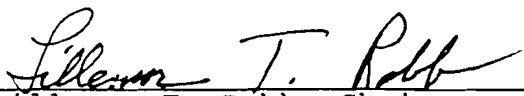
All concur.

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: December 17, 1985


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