

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

HOWARD MILLER,

a Justice of the Town Court of Cairo,
Greene County.

Determination

BEFORE: Mrs. Gene Robb, Chairwoman
Honorable Fritz W. Alexander, II
David Bromberg
Honorable Richard J. Cardamone
Dolores DelBello
Michael M. Kirsch
Victor A. Kovner
William V. Maggipinto
Honorable Isaac Rubin
Honorable Felice K. Shea
Carroll L. Wainwright, Jr.

Respondent, a justice of the Town Court of Cairo, Greene County, was served with a Formal Written Complaint dated May 24, 1979, setting forth one charge of misconduct. Respondent filed an amended answer dated July 26, 1979.

By notice dated October 1, 1979, the administrator of the Commission moved for summary determination pursuant to Section 7000.6(c) of the Commission's rules (22 NYCRR 7000.6[c]). Respondent did not oppose the motion. The Commission granted the motion on October 25, 1979, found respondent's misconduct established with respect to the charge in the Formal Written Complaint, and set a date for oral argument on the issue of an appropriate sanction.

The administrator and respondent submitted memoranda in lieu of oral argument.

The Commission considered the record in this proceeding on December 13, 1979, and upon that record makes the following findings of fact.

1. From October 6, 1977, to May 16, 1978, respondent failed to serve a summons or give notice of a hearing in the Small Claims Court case of Singer v. Antonucci, because of his personal feelings of irritation with the plaintiff, Robert Singer.

2. Respondent did not reply to two letters dated April 12, 1978, and May 3, 1978, from the Office of Court Administration, and three letters dated December 13, 1978, January 9, 1978, and January 22, 1978, from this Commission, inquiring into his delay in proceeding with the Singer case.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 33.1, 33.2, 33.3(a)(5) and 33.3(b)(1) of the Rules Governing Judicial Conduct, and Canons 1, 2, 3A(5) and 3B(1) of the Code of Judicial Conduct. Charge I of the Formal Written Complaint is sustained, and respondent's misconduct is established.

By failing to serve a summons or give notice of a hearing in the Singer case for more than seven months, respondent (i) contravened Section 4500.2(c) of the Uniform Justice Court Rules for Small Claims Procedures, which requires that the date for a hearing be not less than 15 nor more than 30 days from the date the action is commenced, and (ii) thereby violated Section

33.3(a)(5) of the Rules Governing Judicial Conduct, which requires a judge to dispose promptly the business of the court.

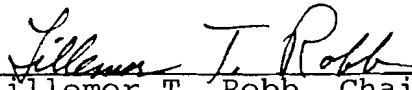
In allowing his personal dislike for the plaintiff in the Singer case to interfere with the proper discharge of his judicial responsibilities, respondent violated the applicable sections of the Rules, in that he allowed a personal relationship to influence his judicial conduct and judgment (Section 33.2[b]). Neither justice nor public confidence in the integrity of the judiciary is served when a judge delays commencement of a proceeding because of his personal irritation with one of the parties.

Respondent's failure to reply to two inquiries from the Office of Court Administration and three from this Commission in the course of a duly authorized investigation compounds the initial misconduct. Failure to cooperate with a Commission investigation has been held to be serious misconduct. Matter of Jordan, N.Y.L.J., Aug. 7, 1979, p. 5, col. 1 (Ct. on the Judiciary, 1979; judge suspended without pay for four months).

By reason of the foregoing, the Commission determines that the appropriate sanction is censure. Mr. Kirsch dissents only with respect to sanction and votes that the appropriate sanction is admonition.

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.


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

Dated: February 11, 1980
Albany, New York

APPEARANCES:

Gerald Stern (John W. Dorn, Of Counsel) for the Commission

Carpenter & Keefe (By James F. Keefe) for Respondent