

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

JOSEPH MYERS,

a Justice of the Norfolk Town Court,
St. Lawrence 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 and Cathleen S. Cenci,
Of Counsel) for the Commission

Duncan S. MacAffer for Respondent

The respondent, Joseph Myers, a justice of the Norfolk
Town Court, St. Lawrence County, was served with a Formal
Written Complaint dated January 8, 1985, alleging that he failed
to disqualify himself in a case involving his son. Respondent
filed an answer dated March 22, 1985.

By order dated February 13, 1985, the Commission designated Peter N. Wells, Esq., as referee to hear and report proposed findings of fact and conclusions of law. A hearing was held on April 2, 1985, and the referee filed his report with the Commission on July 24, 1985.

By motion dated August 16, 1985, the administrator of the Commission moved to confirm in part and disaffirm in part the referee's report and for a finding that respondent be removed from office. Respondent opposed the motion by cross-motion on September 11, 1985, and moved for a change of venue of the oral argument.

The Commission denied the change of venue on September 12, 1985, and respondent waived oral argument. On September 13, 1985, the Commission heard oral argument by the administrator and thereafter considered the record of the proceeding and made the following findings of fact.

1. Respondent is a justice of the Norfolk Town Court and was at all times herein noted.

2. On December 31, 1983, a car driven by respondent's son, Joseph Myers, Jr., and one driven by Terry Lee Kerr collided in the Town of Norfolk, causing property damage to both cars.

3. Respondent paid the insurance premiums on the car driven by his son at the time of the accident.

4. The accident was investigated by Chief Thomas A. Matzell of the Norfolk Town Police Department. On the day of the accident, Chief Matzell did not issue a ticket to either of the drivers involved in the accident.

5. On three occasions after the accident, the junior Mr. Myers contacted Chief Matzell and informed him that Mr. Kerr had not paid for the damage to the Myers car as Mr. Myers and Chief Matzell understood had been agreed on the day of the accident.

6. On January 27, 1984, Chief Matzell wrote to Mr. Kerr and asked him to contact the junior Mr. Myers to resolve the matter. Chief Matzell never received a response to the letter.

7. After he sent the letter, Chief Matzell was again contacted by the junior Mr. Myers and told that payment for the damage had not been made by Mr. Kerr.

8. On or about March 2, 1984, Chief Matzell contacted respondent and asked whether a criminal summons could be obtained to bring Mr. Kerr into court to resolve the matter.

9. Respondent replied that an information would have to be written upon which a criminal summons could be issued by the court.

10. Based on his conversation with respondent, Chief Matzell prepared a uniform traffic ticket and simplified traffic information returnable before respondent on March 15, 1984.

11. Chief Matzell left the instruments on respondent's desk and noted in his log, "Per request of T/J Myers, issued summons to Terry L. Kerr...."

12. On March 3, 1984, respondent prepared but did not sign a criminal summons for Mr. Kerr, returnable before respondent on March 15, 1984, and placed it in Chief Matzell's mailbox at the town hall.

13. Chief Matzell attempted to serve the summons on Mr. Kerr but was unsuccessful.

14. Chief Matzell returned the summons to respondent and advised him that he was unable to serve Mr. Kerr.

15. Respondent told Chief Matzell that he would find another officer to serve the summons.

16. Respondent approached Trooper Michael C. Swyers of the State Police and asked him to serve the summons.

17. Trooper Swyers refused. Respondent told him that he would find someone else to serve the summons.

18. In a discussion with Sergeant Dominic Germano of the St. Lawrence County Sheriff's Department, respondent indicated that no one had been able to locate Mr. Kerr to serve the summons.

19. Sergeant Germano offered to attempt to serve the summons.

20. Sergeant Germano subsequently served the summons on Mr. Kerr.

21. Mr. Kerr never appeared in court in response to the summons.

22. At some time before June 28, 1984, respondent wrote a note, dated March 15, 1984, addressed to his fellow judge in the Norfolk Town Court, stating that respondent could not handle the Kerr matter and purporting to transfer the case to the other judge. The note was attached to the papers in the Kerr case.

23. Respondent never transmitted the note and the Kerr papers to the other judge.

24. On June 28, 1984, respondent produced the note from his desk and gave it to a Commission investigator.

25. The note was intended to make it appear that respondent had disqualified himself or attempted to disqualify himself from the Kerr case.

26. Approximately two weeks before the hearing in this matter on April 2, 1985, respondent again approached Trooper Swyers.

27. Respondent accused Trooper Swyers of lying in a statement to the Commission concerning the Kerr summons and threatened to cause trouble for Trooper Swyers and to attempt to have him fired.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections

100.1 and 100.2 of the Rules Governing Judicial Conduct and Canons 1 and 2 of the Code of Judicial Conduct. Paragraphs 4, 4(a), 4(b), 4(c) and 5 of the Formal Written Complaint are sustained, and respondent's misconduct is established. Respondent's cross-motion is denied.

The facts establish that respondent prepared a criminal summons to bring into his court a party to a dispute in which respondent and his son had an interest and of which respondent had personal knowledge. Such an act is improper. Matter of Sims v. State Commission on Judicial Conduct, 61 NY2d 349, 353-55 (1984); Matter of Tobey, unreported (Com. on Jud. Conduct, Sept. 19, 1985). Respondent's attempt to have the summons served and the defendant brought before him was also improper.

Respondent seriously exacerbated his misconduct by attempting to make it appear that he had intended to disqualify himself in a note that was never delivered to his fellow judge. Such deception is antithetical to the role of a judge who is sworn to uphold the law and seek the truth. Matter of Steinberg v. State Commission on Judicial Conduct, 51 NY2d 74, 78 (fn.) (1980); Matter of Moore, 3 Commission Determinations 256, 258 (Com. on Jud. Conduct, Nov. 10, 1983). By providing the note to a Commission investigator, respondent sought to obstruct the Commission's discharge of its lawful mandate. Matter of Jones,

47 NY2d (mmm) (Ct. on the Judiciary, 1979); Matter of Jordan, 47 NY2d (xxx) (Ct. on the Judiciary, 1979).

Respondent further compounded his misconduct by threatening a witness in the Commission proceeding against him. Matter of Fabrizio v. State Commission on Judicial Conduct, 65 NY2d 275 (1985); Matter of Mahar, 3 Commission Determinations 47 (Com. on Jud. Conduct, June 10, 1982).

Respondent has violated the public trust and demonstrated that he is unfit for judicial office.

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

Mrs. Robb, Mr. Bower, Mr. Cleary, Mr. Kovner, Judge Ostrowski, Judge Rubin, Judge Shea and Mr. Sheehy concur.

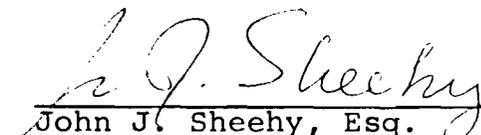
Mr. Bromberg and Mrs. DelBello were not present.

Judge Ciparick was not a member of the Commission when the vote in this proceeding was taken.

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: October 21, 1985



John J. Sheehy, Esq.
New York State
Commission on Judicial Conduct