

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 E. MYERS,

a Justice of the Norfolk Town Court,
St. Lawrence County.

THE COMMISSION:

Mrs. Gene Robb, Chairwoman
Honorable Fritz W. Alexander, II
John J. Bower, Esq.
David Bromberg, Esq.
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 (John J. Postel and Henry S. Stewart,
Of Counsel) for the Commission

Duncan S. MacAffer for Respondent

The respondent, Joseph E. Myers, a justice of the
Norfolk Town Court, St. Lawrence County, was served with a
Formal Written Complaint dated February 18, 1983, alleging,
inter alia, that he displayed a dart board in his chambers and

represented that it was used to determine fines. Respondent filed an answer dated March 7, 1983.

By order dated April 11, 1983, the Commission designated Martin M. Goldman, Esq., as referee to hear and report proposed findings of fact and conclusions of law. A hearing was held on June 15, 1983, and the referee filed his report with the Commission on February 3, 1984.

By motion dated March 8, 1984, 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 censured. Respondent opposed the motion on May 1, 1984. The administrator filed a reply dated May 3, 1984. The Commission heard oral argument on the motion on August 21, 1984, at which respondent appeared by counsel, and thereafter considered the record of the proceeding and made the following findings of fact.

As to Charges I through III of the Formal Written Complaint:

1. Respondent, a part-time, non-lawyer judge who also works at an aluminum plant, was given a dart board by co-workers in 1982. The dart board, which was made by respondent's co-workers, had dollar amounts of fines substituted for the scores on a traditional dart board. The bull's eye was marked "free" or "UCD," meaning unconditional discharge.

2. Respondent hung the dart board in his chambers in late May or early June of 1982 in place of a picture of President Lincoln.

3. On June 17, 1982, Deborah MacIntire appeared in respondent's court on a charge of Speeding.

4. Ms. MacIntire was called into respondent's chambers. After some conversation, respondent indicated that the fine would be \$25.

5. While Ms. MacIntire was paying the fine, respondent offered her an opportunity to throw a dart to determine her fine. He told her that if she missed the dart board, she would be sentenced to seven days in jail.

6. Respondent showed Ms. MacIntire a printed form, which had also been made by respondent's fellow workers at the aluminum plant and given to respondent. It read:

I of my own free will would like to toss a dart at a board to decide the amount of fine which will be charged to me for my conviction of the violation which I have been charged. I do not hold the judge responsible for this opportunity to decide on the amount of fine, and I resolve [sic] all interested parties from this act, I am doing it on my own free will.

7. Ms. MacIntire declined the opportunity to throw a dart and declined to sign the form.

8. Respondent then asked Ms. MacIntire whether she would like to throw a dart to see what fine she would have

received. She accepted, threw a dart and hit a circle marked \$5. The fine was not changed by respondent.

9. Also on June 17, 1982, Mary Baxter appeared before respondent in chambers to pay a fine for her son, Dale, who had pled guilty to a charge of Trespassing.

10. Respondent told Ms. Baxter that the fine would be \$25. She paid it by check.

11. Respondent then asked Ms. Baxter whether she would like to throw a dart. She responded, "Sure, bend over."

12. Respondent indicated that the dart could affect the amount of the fine.

13. Ms. Baxter threw a dart and hit an amount higher than \$25. The fine was not changed by respondent.

14. On June 17, 1982, Ann Catherine O'Brien and Ginger Walters appeared before respondent in chambers on charges of Trespassing.

15. Respondent told Ms. O'Brien and Ms. Walters that the fine in their cases would be \$25.

16. The defendants noticed the dart board and asked respondent about it. Respondent told the defendants that if they shot a dart, they would pay the fine indicated on the board. If they missed the board, he said, they would go to jail for the weekend.

17. The defendants were not invited to use the dart board. They paid their fines and left the court.

18. On June 24, 1982, Hugh Palmer appeared before respondent in chambers on charges of Speeding, Failure To Keep Right and Driving While Intoxicated.

19. Mr. Palmer pled guilty to a reduced charge of Driving While Ability Impaired. Respondent stated that the total fine for the three offenses would be \$300, and Mr. Palmer paid the fine.

20. Afterward, Mr. Palmer noticed the dart board on the wall behind respondent's head and inquired about it. Respondent said, "Well, it could help me with hard decisions."

21. Mr. Palmer then paid his fine to the court clerk and left the court.

22. On June 24, 1982, Charles B. Nash, an assistant district attorney in St. Lawrence County, appeared before respondent on behalf of the prosecution for a preliminary hearing in a felony case.

23. After the hearing, Mr. Nash went with respondent into chambers. Mr. Nash noticed the dart board behind respondent's desk.

24. Mr. Nash said that he was good at throwing darts. Respondent said, "If you throw it and miss, you go to jail."

25. Mr. Nash felt that the presence of such a dart board in respondent's chambers "didn't look good" and reported it to the district attorney the following day.

26. The board was used as a joke and was not to be taken seriously by defendants. There was no evidence that the dart board was ever utilized to determine a fine for any defendant, or was ever intended to be so used.

27. There was no evidence that the "release" was utilized in a serious manner or was ever duplicated or that respondent had any other releases in addition to the original which he kept in his desk. The release was utilized only in the one instance cited above.

28. There is no evidence that any of the defendants were unfairly treated.

29. Respondent removed the dart board from his chambers in July 1982 when he realized that negative comments were being made about the dart board. That removal took place prior to receipt by respondent of the initial complaint from the Commission.

As to Charge IV of the Formal Written Complaint:

30. The charge is not sustained and is, therefore, dismissed.

As to Charge V of the Formal Written Complaint:

31. The charge is not sustained and is, therefore, dismissed.

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

100.1, 100.2(a), 100.3(a)(1), 100.3(a)(2) and 100.3(a)(3) of the Rules Governing Judicial Conduct and Canons 1, 2A, 3A(1), 3A(2) and 3A(3) of the Code of Judicial Conduct. Charges I and II of the Formal Written Complaint are sustained. Charge III is sustained insofar as it alleges that respondent invited Ms. MacIntire to throw a dart and gave her a form release. Respondent's misconduct is established.

Respondent's attempt at humor was ill-founded and misplaced. By hanging a dart board in his chambers, indicating to several persons that he used it to dispose of cases and inviting defendants to throw the darts, respondent acted in an indecorous and undignified manner. He demeaned his judicial office and the judicial system itself.

It is, however, clear that the invitations to dart-throwing and the one incident of dart-throwing itself (in the Baxter case) all took place after the fines had been set; and, in all cases but one, after the fines had already been paid. Further, it is clear that the defendants knew that the matter was one of jest and that their fines would not be changed. In fact, no fines were ever changed. The "release" form was in a drawer in respondent's desk, was shown once to one defendant and was never utilized.

The dart board remained on the wall of respondent's chambers less than two months, and respondent voluntarily

removed it because he realized that it was the subject of unfavorable comments, and that its presence in his chambers was inappropriate. Importantly, the dart board was removed before respondent received his first notice of complaint from the Commission.

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

Mrs. Robb, Mr. Bromberg, Mr. Cleary, Mr. Kovner, Judge Ostrowski, Judge Shea and Mr. Sheehy concur, except that Judge Shea dissents as to Charge IV only and votes that the charge be sustained.

Mr. Bower and Mrs. DelBello dissent as to Charge IV and vote that the charge be sustained and dissent as to sanction and vote that respondent be censured.

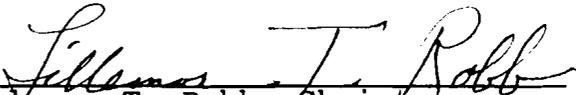
Judge Alexander and Judge Rubin were not present.

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: October 24, 1984


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