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

JOHN C. ORLOFF,

a Justice of the Northampton Town Court, Fulton 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 (Cathleen S. Cenci, Of Counsel) for the Commission

Caputo, Aulisi and Skoda (By Richard T. Aulisi; Robert M. Cohen, Of Counsel) for Respondent

The respondent, John C. Orloff, a justice of the Northampton Town Court, Fulton County, was served with a Formal Written Complaint dated April 21, 1986, alleging, inter alia, that he permitted clients of his private business to appear before him. Respondent submitted an answer dated May 16, 1986.

By order dated May 21, 1986, 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 June 30 and July 21, 1986, and the referee filed his report with the Commission on December 28, 1986.

By motion dated March 3, 1987, the administrator of the Commission moved to confirm the referee's report, to adopt additional findings and conclusions and for a finding that respondent be removed from office. Respondent opposed the motion on March 25, 1987.

On April 14, 1987, 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 is a part-time justice of the Northampton Town Court and has been since February 1985.

2. Respondent, a retired police officer, also operates a private investigation business in which he conducts investigations and serves process. Approximately 50 percent of his clients are attorneys or litigants referred to respondent by lawyers.

3. Richard T. Aulisi and his law firm are regular clients of respondent's private investigation business. At

almost all times, respondent is working on a pending file for the Aulisi firm and has since he opened his private investigation business in 1972.

4. Since becoming a judge, respondent has conducted three or four accident investigations for Mr. Aulisi.

5. Between July and December 1985, Mr. Aulisi appeared before respondent in People v. Scott M. Anderson.

6. Between April and November 1985, Mr. Aulisi appeared before respondent in People v. Scott H. Hook.

7. Respondent was conducting a private investigation for Mr. Aulisi while the Hook matter was pending in respondent's court.

8. Between May and July 1985, Mr. Aulisi appeared before respondent in People v. Daniel R. Thum, Jr.

9. George Abdella and his law firm have been clients of respondent's private investigation business for four or five years.

10. Since becoming a judge, respondent has conducted three or four investigations for Mr. Abdella.

11. Between August and October 1985, Mr. Abdella appeared before respondent in People v. Charles H. Ashley, Jr.

12. Edward S. Lomanto and his law firm are clients of respondent's private investigation business.

13. Between February and May 1985, Mr. Lomanto appeared before respondent in People v. Lewis H. Buseck. During

this time period, respondent obtained a signature on an affidavit for Mr. Lomanto's law firm.

14. In August 1985, Mr. Lomanto's firm appeared in respondent's court in People v. Fred E. Oare, Jr.

15. In June 1985, Mr. Lomanto appeared before respondent in People v. John R. Proper.

16. Roger L. Paul and his law firm have been clients of respondent's private investigation business since 1983.

17. Since becoming a judge, respondent has conducted an investigation and served process six to eight times for Mr. Paul.

18. In July and August 1985, respondent presided over and disposed of a case in which Mr. Paul was charged with Speeding.

19. In May 1985, Mr. Paul appeared before respondent in People v. Darryl M. Blowers.

20. In March and April 1985, Mr. Paul appeared before respondent in People v. Lauraine G. Demers.

21. In May and June 1985, Mr. Paul appeared before respondent in People v. William T. Dunham.

22. In July and August 1985, Mr. Paul appeared before respondent in People v. Mark E. Roberts.

23. In July and August 1985, Mr. Paul appeared before respondent in People v. Eric J. Livers.

24. Respondent served process for Mr. Paul six to eight times in 1985 and was paid approximately $200.

25. Joseph T. Wilkinson has been a client of respondent's private investigation business since before respondent became a judge.

26. Between July and October 1985, Mr. Wilkinson appeared before respondent in People v. William D. Gifford.

27. Paul L. Wollman has been a client of respondent's private investigation business for three or four years.

28. Since becoming a judge, respondent has conducted two investigations and has served process for Mr. Wollman.

29. In August 1985, Mr. Wollman called respondent by telephone on behalf of the defendant in People v. Peter J. Sheckton, a case then pending before respondent.

As to Charge II of the Formal Written Complaint:

30. On July 27, 1985, Roger L. Paul was ticketed for Speeding in the Town of Northampton. The ticket was returnable in respondent's court.

31. Mr. Paul and his law firm are clients of respondent's private investigation business. Respondent served process for Mr. Paul six to eight times in 1985.

32. After receiving the ticket, Mr. Paul talked with the district attorney, William H. Gritsavage, who agreed to reduce the charge.

33. Upon the district attorney's recommendation, respondent granted a reduction of the charge from Speeding, a three-point violation, to Unattended Motor Vehicle, which carries no points on a driver's license, and granted a conditional discharge.

34. Respondent acknowledged that he ordinarily does not permit a reduction from a three-point violation to a no-point violation. It was the only case in which respondent has consented to such a reduction.

35. Respondent conceded in testimony before a member of the Commission that the district attorney wanted to give Mr. Paul "a break" and the respondent went "along with it."

As to Charge III of the Formal Written Complaint:

36. On July 9, 1985, Eric J. Livers was charged in the Village of Northville with Assault, Third Degree. The matter was returnable in respondent's court.

37. An issue arose in the proceeding as to whether the injury sustained by the victim of the alleged assault was of sufficient severity to warrant a charge of assault.

38. Outside of court and outside the presence of the parties, respondent called a physician who had treated the victim and discussed the nature of the injury. From his conversation with the physician, respondent concluded that the injury was not sufficient to warrant a charge of assault.

39. Respondent then discussed the matter with the prosecutor in the case, and he agreed to reduce the charge from Assault to Harassment.

40. On August 6, 1985, Mr. Livers pled guilty to a charge of Harassment and was given a conditional discharge and a suspended sentence of 15 days.

41. On August 5, 1985, Charles H. Ashley, Jr., was charged with Speeding and Modified Exhaust. The matter was returnable in respondent's court.

42. Outside of court and outside the presence of the parties, respondent conferred with the arresting officer and determined that the Speeding charge was based on a visual estimate of the defendant's speed.

43. Thereafter, respondent conferred with the prosecutor, who recommended a reduction of the charges to Failure to Obey a Stop Sign.

44. On October 4, 1985, the defendant pled guilty to the stop sign charge in satisfaction of both charges and was fined $75.

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)(4), 100.3(c)(1) and 100.5(c)(1) of the Rules Governing Judicial Conduct and Canons 1, 2, 3A(4), 3C(1) and 5C(1) of the Code of Judicial Conduct. Charges I through

III of the Formal Written Complaint are sustained, and respondent's misconduct is established.

Respondent's ex parte communications with a physician in one case and with the arresting officer in another were clear violations of Section 100.3(a)(4) of the Rules Governing Judicial Conduct. Matter of Loper, 1985 Annual Report 172 (Com. on Jud. Conduct, Jan. 25, 1984); Matter of Racicot, 1982 Annual Report 99 (Com. on Jud. Conduct, Feb. 6, 1981).

It was also improper for respondent to hear the case in which Mr. Paul was a party. Respondent's impartiality might reasonably have been questioned inasmuch as Mr. Paul was a frequent client of respondent's private business. Respondent was, therefore, required to disqualify himself. Section 100.3(c)(1) of the Rules Governing Judicial Conduct; Matter of DelPozzo, 1986 Annual Report 77 (Com. on Jud. Conduct, Jan. 25, 1985); Matter of Whalen, 1984 Annual Report 157 (Com. on Jud. Conduct, Jan. 20, 1983). Respondent compounded his misconduct in this case by granting Mr. Paul a disposition that he never allowed any other defendants, thus creating the appearance of favoritism. Matter of Wait v. State Commission on Judicial Conduct, 67 NY2d 15 (1986); Matter of Latremore, 1987 Annual Report 97 (Com. on Jud. Conduct, May 30, 1986); Matter of Winick, unreported (Com. on Jud. Conduct, Jan. 29, 1987).

A different question is raised as to respondent's practice of presiding over cases in which Mr. Paul and other attorneys who were clients represented parties in respondent's court. We conclude that this, too, was improper in that it raises reasonable questions concerning respondent's ability to be impartial and in that respondent engaged in financial and business dealings that involved him in frequent transactions with lawyers likely to come before the court, in violation of Section 100.5(c)(1) of the Rules Governing Judicial Conduct.

We do not find, however, that respondent's professional employment as a private investigator is necessarily incompatible with his role as a judge. The nature of respondent's work apparently involves investigations in civil cases and, therefore, does not inherently align him in the public eye with the prosecution. Although respondent testified that 50 percent of his clients are attorneys, it has not been demonstrated that all of these attorneys appear regularly before him. Nor has it been shown that if respondent were to disqualify himself in all cases in which his clients appear, he would be unable to share equally in the work of the court.

Furthermore, respondent's counsel has represented that respondent is seeking to divest his business and seek other employment and will avoid such conflicts in the future.

While it was improper for respondent to preside over cases in which his current or former clients were parties or

attorneys, it does not seem that such conduct must be repeated in the future, impairing respondent's usefulness as a judge. The conflict may be avoided if respondent refrains from accepting as clients lawyers who are likely to appear before him, if he changes his primary occupation or if he disqualifies himself from all cases in which his clients or former clients appear.

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

Mrs. Robb, Judge Ciparick, Mr. Cleary, Mr. Kovner, Judge Ostrowski and Mr. Sheehy concur.

Mr. Bromberg, Mrs. DelBello, Judge Rubin and Judge Shea dissent as to sanction only and vote that respondent be removed from office.

Mr. Bower 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: May 28, 1987

Lillemor T. Robb

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

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DISSENTING OPINION BY JUDGE SHEA, IN WHICH MR. BROMBERG, MRS. DELBELLO AND JUDGE RUBIN JOIN

I agree with the majority that the charges against respondent have been sustained and that he is guilty of misconduct. However, I believe that respondent has violated the ethical obligations of his office and cannot be counted on to adhere to them in the future. Accordingly, removal from office is the appropriate sanction.

Unlike the majority, I find that respondent's work as a private investigator and process server conflicts and is incompatible with his role as a judge. Since at least 50 percent of respondent's clients are attorneys, and respondent sits in a small town, his clients frequently appear before him in court. During the year that the Commission was considering charges of misconduct against respondent, he has persisted in his view that his impartiality could not be reasonably questioned when he is presiding over those cases in which lawyers appear for whom he works. He sees no conflict of

interest or appearance of impropriety for a part-time judge to be engaged in an occupation in which he is employed by attorneys who practice before him.

The majority believes, apparently, that respondent will avoid a conflict of interest in the future by disqualifying himself in those cases in which his clients appear or by seeking other employment. Neither of these alternatives was put forward by respondent in his sworn testimony and thus neither their feasibility nor the likelihood of their occurrence can be assessed. The record reveals no basis for the majority's confidence that serious ethical breaches by respondent will not recur. A representation by respondent's attorney that he believes respondent would abide by the Commission's interpretation of the rules does not suffice.

The respondent's ex parte communications with a physician in the Livers case and with a police officer in the Ashley case, as well as his failure to disqualify himself in the Paul case, underscore respondent's insensitivity to his judicial responsibilities.

Accordingly, I vote that respondent should be removed.

Dated: May 28, 1987

Honorable Felice K. Shea, Member
New York State
Commission on Judicial Conduct