

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

CLEMENT F. QUARANTELLA,
a Justice of the Murray Town
Court, Orleans County.

THE COMMISSION:

Mrs. Gene Robb, Chairwoman
John J. Bower, 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

Heath & Martin (By Jeffrey R. Martin) for Respondent

The respondent, Clement F. Quarantello, a justice of
the Murray Town Court, Orleans County, was served with a Formal

* Judge Shea's term expired on March 31, 1988. The vote in this matter was on March 18, 1988. The Honorable Myriam J. Altman and Henry T. Berger, Esq., were appointed to terms commencing April 1, 1988.

Written Complaint dated June 17, 1987, alleging that he conducted a proceeding without hearing the defendant, that he indicated bias against an attorney and that he was not candid with the Commission. Respondent filed an answer dated July 21, 1987.

On January 26, 1988, the administrator of the Commission, respondent and respondent's counsel entered into an agreed statement of facts pursuant to Section 44, subdivision 5, of the Judiciary Law, waiving the hearing provided for in Section 44, subdivision 4, of the Judiciary Law and stipulating that the Commission make its determination based on the pleadings and the agreed upon facts. The Commission approved the agreed statement on February 19, 1988.

The administrator and respondent submitted memoranda as to sanction. Respondent waived oral argument.

On March 18, 1988, the Commission heard oral argument by the administrator 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 justice of the Murray Town Court and has been since June 1963.

2. On October 14, 1986, Raymond B. Lissow signed a notice and petition in Lissow Development Corp. v. Donald Rodas, George Hussong and Shelia Cary, a summary proceeding for

eviction. The matter was returnable before respondent on October 22, 1986, at 7:00 P.M.

3. Prior to 6:50 P.M. on October 22, 1986, Mr. Lissow appeared in court before respondent. Mr. Lissow presented letters from Mr. Rodas and Mr. Hussong, indicating that they did not contest the proceeding. Mr. Lissow advised respondent that he did not believe that Mr. Rodas and Mr. Hussong intended to appear.

4. Respondent asked Mr. Lissow whether Ms. Cary was present and was told that she was not.

5. Prior to 7:00 P.M., respondent signed a warrant of eviction prepared by Mr. Lissow against Ms. Cary as tenant in possession of the premises. Mr. Lissow left the courtroom.

6. Between 6:50 P.M. and 6:55 P.M., Mr. Rodas and Mr. Hussong appeared in court. Respondent advised them that he had already signed a warrant of eviction.

7. Between 6:55 P.M. and 7:00 P.M., Ms. Cary and her attorney, John Zonitch of Oak Orchard Legal Services, arrived in court.

8. At about 7:00 P.M., respondent called the case. Mr. Zonitch and Ms. Cary approached the bench. Respondent told them that Mr. Lissow had already appeared and that respondent had signed a warrant of eviction against Ms. Cary.

9. Mr. Zonitch objected and asked to be allowed to present his defense on Ms. Cary's behalf. He submitted a written answer to respondent.

10. Respondent asked Mr. Zonitch whether he was associated with "legal aid." Mr. Zonitch replied affirmatively, and respondent said harshly that "legal aid" was not entitled to a trial in his court. "They can throw me off the bench, but you won't get a trial in my court," respondent declared.

11. Mr. Zonitch argued that the petition was invalid. Respondent returned the answer to Mr. Zonitch and told him that he would have to contact Mr. Lissow if Ms. Cary wished to remain on the premises that were the subject of the proceeding.

As to Charge II of the Formal Written Complaint:

12. On December 15, 1986, respondent replied to a duly-authorized inquiry from Commission staff concerning the proceeding against Ms. Cary. In a letter to Commission staff, respondent falsely stated that he had held a hearing in the case and that Mr. Rodas and Mr. Hussong were present, as well as Mr. Lissow.

13. On February 27, 1987, respondent testified before a member of the Commission concerning the case. Respondent falsely testified that he had held a hearing in the matter at or after 7:00 P.M. on October 22, 1986, and that Mr. Lissow, Mr. Rodas and Mr. Hussong had appeared together.

As to Charge III of the Formal Written Complaint:

14. During his testimony before a member of the Commission on February 27, 1987, respondent indicated bias

against attorneys and clients of Oak Orchard Legal Services. "Well, I don't like legal aid, I'll tell you right out," respondent said. "I don't care for them. Therefore, the indigent they call it, it seems to me that these--in my estimation, they are better off than the fellow that's got a couple of bucks. They get the free service, and the other fellow has got to pay, even though he can't afford it. But just because he's got a couple of bucks, they won't give him legal aid."

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)(1) and 100.3(a)(4) of the Rules Governing Judicial Conduct and Canons 1, 2, 3A(1) and 3A(4) of the Code of Judicial Conduct. Charges I through III of the Formal Written Complaint are sustained, and respondent's misconduct is established.

Before the time at which the defendants had been summoned to court, respondent heard the plaintiff and issued ex parte a warrant of eviction. When the defendant arrived, respondent announced the outcome and refused to hear any defense, declaring that "legal aid" was not entitled to a hearing in his court.

Respondent closed the courthouse door to this defendant, denying her the fundamental right to be heard. Such

behavior by a judge constitutes serious misconduct. Matter of Mullen, 1987 Annual Report 129 (Com. on Jud. Conduct, May 22, 1986); Matter of Reese, 1985 Annual Report 217 (Com. on Jud. Conduct, Mar. 22, 1984).

When called upon by the Commission to explain his conduct, respondent gave a false version of the events on two occasions. Deception is antithetical to the role of a judge who is sworn to uphold the law and seek the truth. Matter of Myers v. State Commission on Judicial Conduct, 67 NY2d 550, 554 (1986).

Respondent's statements of bias toward legal aid attorneys and their clients further demonstrate his unfitness for judicial office. The ability to be impartial and appear impartial is an indispensable requirement for a judge. Matter of Sardino v. State Commission on Judicial Conduct, 58 NY2d 286, 290 (1983).

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

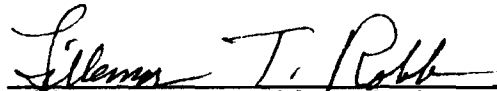
Mrs. Robb, Mr. Bower, Judge Ciparick, Mr. Cleary, Mrs. DelBello, Mr. Kovner, Judge Ostrowski, Judge Shea and Mr. Sheehy concur.

Judge Rubin 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: April 15, 1988



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