

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

JOHN T. RACICOT,

Determination

a Justice of the Town Court of
Champlain, Clinton County.

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

APPEARANCES:

Gerald Stern (Stephen F. Downs, Of Counsel)
for the Commission

Gary L. Favro for Respondent

The respondent, John T. Racicot, a justice of the Town Court of Champlain, Clinton County, was served with a Formal Written Complaint dated December 14, 1979, alleging impropriety in his conduct in two cases. Respondent filed an answer dated January 4, 1980.

On June 25, 1980, 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 by Section 44, subdivision 4, of the Judiciary Law, and stipulating that the Commission make its determination on the pleadings and the agreed upon facts. The Commission approved the agreed statement and scheduled oral argument as to whether the facts constitute misconduct and, if so, an appropriate sanction. Both the administrator and respondent submitted memoranda in lieu of oral argument.

The Commission considered the record of this proceeding on October 30, 1980, and upon that record makes this determination.

With respect to Charge I of the Formal Written Complaint, the Commission makes the following findings of fact.

1. From December 1976 to October 1977, two cases entitled People v. Stephen Barge were pending in respondent's court, one charging the defendant for driving while license suspended, the other for operating an uninsured and unregistered motor vehicle.

2. Mr. Barge had contended in other proceedings that he was a resident of Ohio and thus was not required to obtain a New York State driver's license.

3. While the two cases against Mr. Barge were pending in respondent's court, respondent had ex parte communications with Mr. Barge's fellow employees, neighbors and others, including Mary Lou Bernard, Mrs. Joseph Papin, Robert Marra and Sandra Hanfield, to determine whether Mr. Barge was a resident of Stony Point. The purpose of these ex parte communications was to determine where Mr. Barge resided and to test the validity of the defense he had offered pertaining to his Ohio residency.

4. On October 6, 1977, after Mr. Barge had pled guilty before respondent on the charges at issue, and after Mr. Barge had taken an appeal from his conviction based in part on his claim that he was a resident of Ohio and had a valid Ohio driver's license and insurance, respondent wrote a letter, ex parte, to Robert Marra, who was Mr. Barge's employer, in an attempt to obtain proof of Mr. Barge's employment and residence in New York State.

5. Respondent acknowledged that it was improper to have had ex parte communications with the employer, fellow employees and neighbors of a defendant in his court to obtain personal knowledge of disputed evidentiary matters.

With respect to Charge II of the Formal Written Complaint, the Commission makes the following findings of fact.

6. On March 31, 1978, Stephen Barge was issued a summons for speeding, returnable before respondent on April 12, 1978.

7. On March 31, 1978, at the request of counsel for Mr. Barge, respondent adjourned the trial date to May 6, 1978, but made no written notation of the adjournment.

8. On April 26, 1978, notwithstanding the adjournment he had granted, respondent signed a warrant for Mr. Barge's arrest for failure to obey the speeding summons.

9. Respondent acknowledged that his conduct with respect to this incident was negligent and improper.

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)(1), 33.3(a)(4), 33.3(a)(6), and 33.3(b)(1) of the Rules Governing Judicial Conduct and Canons 1, 2, 3A and 3B of the Code of Judicial Conduct. Charges I and II of the Formal Written Complaint are sustained and respondent's misconduct is established.

By not only receiving but soliciting ex parte communications concerning disputed evidentiary matters in a case pending before him, respondent prejudiced the impartiality of the adjudicatory process and violated a specific prohibition that a judge "except as authorized by law neither initiate nor consider ex parte or other communications concerning a pending or impending proceedings" (Section 33.3[a][4] of the Rules).

By communicating about the Barge cases with numerous individuals not parties to the proceedings, respondent compromised the integrity of the court and also violated a specific obligation to "abstain from public comment about a pending or impending proceeding" (Section 33.3[a][b] of the Rules).

By his conduct in these matters, respondent exhibited insensitivity to his obligation to be an impartial arbiter of the issues before him. Moreover, Section 33.3(c)(1)(i) of the Rules requires a judge to disqualify himself from any proceeding in which he has personal knowledge of disputed evidentiary facts.

With respect to the charge involving the arrest warrant, respondent was negligent in the performance of his administrative duties and as a result created hardship for the defendant and prejudiced his case. He thus failed in his obligation to discharge diligently his administrative responsibilities (Section 33.3[b][1] of the Rules).

In determining sanction, the Commission notes that respondent acknowledges his misconduct, appears to appreciate the issues underlying this disciplinary proceeding and concurs in the request by counsel to the Commission for censure.

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

All concur.

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: February 6, 1981
New York, New York


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