

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

ROBERT W. REESE,

a Justice of the Ilion Village Court,
Herkimer 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 (Stephen F. Downs, Of Counsel) for the
Commission

The respondent, Robert W. Reese, a justice of the Ilion Village Court, Herkimer County, was served with a Formal Written Complaint dated December 27, 1983, alleging that he attempted to deny a trial to a defendant and failed to cooperate with a Commission

investigation. Respondent did not answer the Formal Written Complaint.

By motion dated January 18, 1984, the administrator of the Commission moved for summary determination and a finding that respondent's misconduct was established. Respondent did not oppose the motion or file any papers in response thereto.

By determination and order dated February 9, 1984, the Commission granted the administrator's motion, found respondent's misconduct established and set a schedule for argument as to appropriate sanction. The administrator submitted a memorandum in lieu of oral argument. Respondent neither submitted a memorandum nor requested oral argument.

On March 8, 1984, the Commission considered the record of the proceeding and made the following findings of fact.

As to Charge I of the Formal Written Complaint:

1. On June 20, 1983, Michael Ciociola received two traffic tickets returnable in respondent's court on June 29, 1983.
2. On June 29, 1983, Mr. Ciociola appeared before respondent and pled not guilty to the traffic charges.
3. Respondent threw the tickets at Mr. Ciociola and said, "I suppose you realize that this means we'll have to have a trial."
4. Respondent indicated that he would dismiss one of the charges but insisted that Mr. Ciociola plead guilty to the other.
5. Mr. Ciociola protested that he was innocent.

6. Respondent agreed to schedule a trial and asked Mr. Ciociola what day he would prefer.

7. When Mr. Ciociola said that he would be available any day but Thursday, respondent said, "I'm sorry but Thursday is the only night I have court."

8. Mr. Ciociola explained that he lived 180 miles from respondent's court and was otherwise engaged on Thursdays, but respondent scheduled the trial for Thursday, July 21, 1983.

9. Mr. Ciociola appeared in respondent's court on July 21. Neither respondent nor the arresting officers appeared, and no one else was present with court business.

10. After waiting an hour for him, Mr. Ciociola contacted respondent by telephone at his home. Respondent told Mr. Ciociola that he had a "personal problem" and could not come to court. He instructed Mr. Ciociola to return the following week.

11. On Thursday, July 28, 1983, Mr. Ciociola again made the trip to respondent's court. Neither respondent nor the arresting officers appeared. After waiting an hour, Mr. Ciociola again attempted to reach respondent by telephone but was unable to do so.

12. Respondent never advised the arresting officers to be in court on July 28, 1983.

13. On August 8, 1983, Mr. Ciociola wrote to respondent and asked how the matter could be resolved. As of December 30, 1983, respondent had not replied.

As to Charge II of the Formal Written Complaint:

14. Respondent failed to cooperate with a Commission investigation in that he:

(a) Failed to appear for the purpose of testifying before a member of the Commission on November 22, 1983, although duly requested to appear by letter dated November 7, 1983; and,

(b) failed to appear for the purpose of testifying before a member of the Commission on November 29, 1983, although duly requested to appear by letter dated November 22, 1983.

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)(3) and 100.3(a)(5) of the Rules Governing Judicial Conduct and Canons 1, 2A, 3A(1), 3A(3) and 3A(5) of the Code of Judicial Conduct. Charges I and II of the Formal Written Complaint are sustained, and respondent's misconduct is established.

Respondent denied Mr. Ciociola the right to be heard--first by insisting that he plead guilty, then by making it inconvenient for him to appear for trial and finally by refusing to be present to hear the case. In doing so, respondent abandoned his ethical obligations to remain impartial, to grant litigants a full right to be heard and to dispose promptly of court business. See, Sections 100.2 and 100.3(a)(5) of the Rules Governing Judicial Conduct; Matter of Curcio, unreported (Com. on Jud. Conduct, Mar. 1, 1983).

A judge must respect the rights of litigants who appear before him. Respondent denied Mr. Ciociola his fundamental right to be heard by a neutral and impartial judge.

Such misconduct is serious and warrants sanctioning respondent. However, respondent has exacerbated his transgression by refusing to cooperate in the Commission's investigation. Such refusal obstructs the Commission's discharge of its lawful mandate and demonstrates respondent's unfitness for judicial office. Matter of Osterman, 13 NY2d (a), (1) (Ct. on the Judiciary 1963); Matter of Jordan, 47 NY2d (xxx) (Ct. on the Judiciary 1979); Matter of Cooley, 53 NY2d 64, 66 (1981).

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

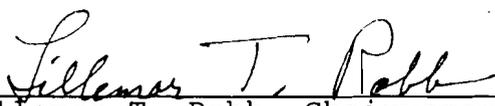
Mrs. Robb, Judge Alexander, Mr. Bower, Mr. Bromberg, Mr. Cleary, Mrs. DelBello, Judge Ostrowski, Judge Shea and Mr. Sheehy concur.

Mr. Kovner 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 4, of the Judiciary Law.

Dated: March 22, 1984



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