

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

ROBERT P. REEVES,

a Judge of the Family Court, Rensselaer
County.

Determination

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 and
Albert B. Lawrence, Of Counsel)
for the Commission

Rice and Conway (By John Carter Rice
and Robert H. Bixby) for Respondent

The respondent, Robert P. Reeves, a judge of the Family Court, Rensselaer County, was served with a Formal Written Complaint dated June 21, 1982, alleging that, over a period of years, he failed to perform properly his judicial duties and engaged in a course of conduct prejudicial to the administration

of justice. The charge included 20 paragraphs and five specifications of instances of alleged misconduct. Respondent filed an answer dated July 12, 1982, denying all allegations of the charge.

By order dated August 3, 1982, the Commission designated the Honorable J. Clarence Herlihy as referee to hear and report proposed findings of fact and conclusions of law. The hearing was held on October 5, 6, 12 and 13, 1982, and the referee filed his report with the Commission on January 11, 1983.

By motion dated February 24, 1983, the administrator of the Commission moved to disaffirm the referee's report and for a finding that respondent's misconduct was established. Respondent opposed the motion by papers dated March 15, 1983, and cross-moved to confirm the referee's report and to dismiss the Formal Written Complaint. The Commission heard oral argument on the motions on March 24, 1983, at which respondent appeared with counsel. Thereafter the Commission, disaffirming the referee's report, in a determination and order dated October 14, 1983, made the findings of fact enumerated below.

With respect to appropriate sanction, the Commission received memoranda from respondent and the administrator and heard oral argument on December 16, 1983, at which respondent and his counsel again appeared. Thereafter the Commission considered the record of the proceeding and made the determination herein.

As to paragraph (a) of the charge in the Formal Written Complaint:

1. From February 1979 to March 1981, in the 26 support cases listed below, respondent failed to advise litigants properly of their right to counsel, as required by Section 433 of the Family Court Act:

- (a) H _____ v. H _____, * February 26, 1979;
- (b) Commissioner v. M _____, February 21, 1979;
- (c) S _____ v. W _____, February 28, 1979;
- (d) W _____ v. W _____, March 1, 1979;
- (e) H _____ v. H _____, March 5, 1979;
- (f) Commissioner v. A _____, March 7, 1979;
- (g) Commissioner v. B _____, March 7, 1979;
- (h) Commissioner v. R _____, March 7, 1979;
- (i) Commissioner v. B _____, March 14, 1979;
- (j) Commissioner v. H _____, March 14, 1979;
- (k) D _____ v. G _____, March 21 and 28, 1979;
- (l) Commissioner v. W _____, March 16, April 19 and September 6, 1979, and January 31, 1980;
- (m) F _____ v. F _____, December 19, 1979;
- (n) L _____ v. L _____, January 7, 1980;
- (o) A _____ v. A _____, October 9, 1980;
- (p) Commissioner v. R _____, January 21, 1981;
- (q) Commissioner v. J _____, January 28, 1981;
- (r) P _____ v. P _____, February 2, 1981;
- (s) D _____ v. D _____, February 9, 1981;
- (t) Commissioner v. D _____, February 11, 1981;
- (u) Commissioner v. A _____, March 11, 1981;
- (v) Commissioner v. F _____, March 11, 1981;
- (w) Commissioner v. P _____, March 11, 1981;
- (x) R _____ v. R _____, March 15, 1981;
- (y) Commissioner v. B _____, March 16, 1981; and
- (z) Commissioner v. B _____, March 18, 1981.

2. From February 1979 to February 1981, in the eight paternity cases listed below, respondent failed to advise the party-respondents of their right to an adjournment to confer with

* In view of the confidential nature of proceedings in Family Court, the names of the parties have been deleted from this determination and the record.

counsel and the right to assigned counsel, as required by Section 262 of the Family Court Act:

- (a) L _____ v. T _____, February 15 and May 24, 1979;
- (b) W _____ v. W _____, February 15, 1979;
- (c) Commissioner v. D _____, March 14, 1979;
- (d) Commissioner v. M _____, March 21, 1979;
- (e) G _____ v. G _____, December 22, 1980;
- (f) N _____ v. N _____, January 29, 1981;
- (g) B _____ v. B _____, February 5, 1981; and
- (h) P _____ v. P _____, February 19, 1981.

3. In March 1979, in the two paternity cases listed below, respondent failed to advise the party-respondents of their right to remain silent and their right to a blood grouping test, at state expense for the indigent, as required by Sections 531 and 532 of the Family Court Act:

- (a) Commissioner v. D _____, March 14, 1979; and
- (b) Commissioner v. M _____, March 21, 1979.

As to paragraph (b) of the charge in the Formal Written Complaint:

4. From January 1979 to March 1981, in the 28 matrimonial, alimony, maintenance and support proceedings listed below, respondent failed to require sworn financial disclosure statements from the litigants appearing before him, as required by Section 424-a of the Family Court Act and Section 236 of the Domestic Relations Law:

- (a) Commissioner v. S _____, January 21, 1979;
- (b) L _____ v. T _____, February 15 and May 24, 1979;
- (c) Commissioner v. H _____, February 21, 1979;
- (d) Commissioner v. Z _____, March 2, 1979;
- (e) C _____ v. C _____, March 5, 1979;
- (f) H _____ v. H _____, March 5, 1979;
- (g) Commissioner v. A _____, March 7, 1979;

- (h) Commissioner v. B _____, March 7, 1979;
- (i) Commissioner v. R _____, March 7, 1979;
- (j) Commissioner v. A _____, March 11, 1979;
- (k) Commissioner v. B _____, March 11, 1979;
- (l) Commissioner v. P _____, March 11, 1979;
- (m) Commissioner v. D _____, March 14, 1979;
- (n) Commissioner v. H _____, March 14, 1979;
- (o) Commissioner v. M _____, March 21, 1979;
- (p) D _____ v. G _____, March 21 and 28, 1979;
- (q) L _____ v. L _____, January 7, 1980;
- (r) A _____ v. A _____, October 9, 1980;
- (s) A _____ v. A _____, January 13, 1981;
- (t) Commissioner v. J _____, January 28, 1981;
- (u) Commissioner v. D _____, February 2, 1981;
- (v) P _____ v. P _____, February 2, 1981;
- (w) B _____ v. B _____, February 5, 1981;
- (x) D _____ v. D _____, February 9, 1981;
- (y) Commissioner v. F _____, February 18, 1981;
- (z) P _____ v. P _____, February 19, 1981;
- (aa) R _____ v. R _____, March 15, 1981; and
- (bb) Commissioner v. B _____, March 16, 1981.

As to paragraph (c) of the charge in the Formal Written Complaint:

5. From March 1979 to March 1981, in the seven custody and family offenses cases listed below, respondent entered dispositional orders, notwithstanding that the court did not have jurisdiction over the party-respondents, and notwithstanding that the party-respondents did not appear in court, contrary to Sections 427(c) and 826 of the Family Court Act and Section 75-e of the Uniform Child Custody Jurisdiction Act:

- (a) G _____ v. G _____, January 7, 1979;
- (b) S _____ v. S _____, February 26, 1979;
- (c) S _____ v. S _____, February 29, 1979;
- (d) R _____ v. R _____, January 7, 1980;
- (e) P _____ v. P _____, October 9, 1980;
- (f) E _____ v. E _____, February 11, 1981; and
- (g) Commissioner v. W _____, March 25, 1981.

As to paragraph (j) of the charge in the Formal Written Complaint:

6. In January 1979, respondent directed deputy court clerk Patricia Beeler to falsify court reports to show that approximately 60 cases had been disposed of within the time periods set in standards promulgated by the Office of Court Administration, when in fact those cases had not then been disposed of. Respondent then directed Ms. Beeler to file the falsified reports with the Office of Court Administration.

As to paragraph (n) of the charge in the Formal Written Complaint:

7. On May 9, 1979, while presiding over Matter of
V _____ R _____, respondent initiated an improper ex parte conference in chambers with a witness in the proceeding, Edward Breen of the Rensselaer County Probation Department. Respondent discussed the case with Mr. Breen during this ex parte conference, prior to deciding the case.

As to paragraph (o) of the charge in the Formal Written Complaint:

8. In April 1980, a paternity case, F _____ v. B _____, came before respondent, who ordered a blood grouping test on motion of the child's law guardian. Both the petitioner and the party-respondent failed twice to appear for the scheduled test.

9. In December 1980, respondent entered an order of filiation against the putative father, notwithstanding that the parties appeared to have abandoned the proceeding, that neither party nor the law guardian were present in court and that there was no evidence before him in the matter. The only individual present when respondent entered the order of filiation was an attorney for the Department of Social Services.

As to paragraph (q) of the charge in the Formal Written Complaint:

10. In 1981, the Honorable Allan Dixon was the senior judge of the Family Court, Rensselaer County, whose responsibilities included administrative supervision of court personnel. Judge Dixon and respondent were the only judges of the court.

11. On January 7, 1981, Judge Dixon revoked the temporary, one-week-old assignment of a particular secretary to respondent's exclusive direction and reassigned her to the "pool" of court personnel who did work for both judges of the court. This reassignment was a regular administrative action within Judge Dixon's authority.

12. Respondent was displeased by the foregoing administrative action by Judge Dixon.

13. On the morning of January 8, 1981, respondent ordered his court officer to either transfer all his cases that day to Judge Dixon or adjourn them. Respondent then made an appointment to meet on the following day with Third Judicial District Administrative Judge Edward S. Conway. For the

remainder of the day on January 8, 1981, respondent undertook no judicial activity or work. Judge Dixon heard all of respondent's cases.

14. On the morning of January 9, 1981, respondent adjourned all the cases on his calendar. At noon, he met with Judge Conway and for approximately 30 minutes discussed his grievance as to Judge Dixon. For the entire day, except for the meeting with Judge Conway, respondent undertook no judicial activity or work.

15. Respondent transferred or adjourned all his cases on January 8 and 9, 1981, notwithstanding that he was available and ready to preside, and notwithstanding that, for the entire two days, his own court officer and court reporter were available and ready to assist him.

16. On January 12, 1981, respondent and Judge Dixon met with Judge Conway and the state's Deputy Chief Administrative Judge, Robert Sise. Respondent complained that he did not have enough staff to hold court properly. Judge Sise told respondent that as long as a court reporter was available, he had sufficient staff to hold court.

As to paragraph (s) of the charge in the Formal Written Complaint:

17. From July 1979 to March 1981, Thomas Cioffi was Judge Dixon's law clerk. He is now an attorney in private practice.

18. In September 1981, Mr. Cioffi's law firm represented Matthew Kirschner before respondent in Matter of K _____. Both Mr. Cioffi and his associate, Thomas O'Connor, were working on the case on behalf of their client.

19. When Mr. Cioffi appeared at the courthouse to proceed, without Mr. O'Connor, he was advised by respondent's law clerk that respondent did not want him in court and that respondent wanted to wait for Mr. O'Connor. Mr. Cioffi then telephoned Mr. O'Connor, who came to court. Mr. Cioffi has not appeared before respondent since the foregoing incident.

As to paragraph (t) of the charge in the Formal Written Complaint:

20. On February 15, 1979, respondent presided over the first call of O _____ v. H _____, a case in which petitioner sought to enforce a child support agreement. Both sides appeared with counsel. Respondent denied defendant's motion to dismiss, entered a temporary support order for \$50 a week and adjourned the case for "approximately 10 days," without a specific return date.

21. On March 16, 1979, respondent set trial for April 23, 1979. On April 23, trial was adjourned due to the illness of defense counsel. Respondent did not set a new trial date.

22. On June 1, 1979, the defendant protested arrearages charged by the support collection unit, because the matter had not been tried. On July 30, 1979, the parties reappeared

before respondent and requested a trial date, which he set for August 8, 1979.

23. On August 8, 1979, no trial was held. On June 26, 1980, petitioner's counsel filed an affidavit stating that the trial date was cancelled at his request. The affidavit cited no grounds for the request.

24. On October 8, 1979, the defendant again protested arrearages charged by the support collection unit, because the matter had not been tried.

25. On February 21, 1980, respondent granted a payroll deduction order on a motion by petitioner with which the defendant claims never to have been served.

26. In June 1980, the defendant moved, by order to show cause, to vacate the temporary support order of February 15, 1979. Respondent denied the motion and scheduled a hearing for August 21, 1980. On August 21, 1980, the parties appeared in court and settled the case by stipulation.

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)(4), 100.3(a)(5), 100.3(b)(1) and 100.3(b)(2) of the Rules Governing Judicial Conduct and Canons 1, 2A, 3A(4), 3A(5), 3B(1) and 3B(2) of the Code of Judicial Conduct. Paragraphs (a), (b), (c), (j), (n), (o), (q), (s) and (t) of the charge in the Formal Written Complaint are sustained and respondent's misconduct is established. Paragraphs (d), (e), (f), (g), (h), (i), (k), (l), (m), (p) and (r) of the charge in

the Formal Written Complaint are not sustained and therefore are dismissed.

Respondent has engaged in a course of conduct which not only violates the relevant ethical standards but also reveals his unwillingness or inability to recognize the fundamental rights of those who appear in his court. His conduct has been prejudicial to the administration of justice.

The record of this proceeding reveals that respondent routinely failed to advise the parties before him of their right to counsel, the right to remain silent and the right to an adjournment in order to consult with counsel. He did not advise respondents in paternity matters of the right to a blood grouping test, and in matrimonial and maintenance cases he failed to require sworn financial disclosure statements as required by law. In seven cases respondent entered dispositional orders in matters over which he did not have jurisdiction and in which the party-respondents did not appear. In several other cases in this record, respondent acted with either a gross misunderstanding or knowing disregard of the proper role of a judge, e.g. entering a filiation order against a putative father in the absence of the parties and the child's law guardian, and without having received any evidence in the matter.

Respondent also directed a deputy court clerk to falsify court reports to show that he had adjudicated approximately 60 cases which in fact were still pending, and he thereafter directed the clerk to file the falsified reports with

the Office of Court Administration. Such conduct by a judge is inexcusable. It shows a shocking disregard for the truth, sets a wholly inappropriate example for court personnel and undermines the integrity of the court. In his testimony before the referee, respondent did not refute the testimony of the deputy clerk whom he directed to falsify official court records, and he offered no explanation for his action.

We reject respondent's assertion that many of his errors are matters of legal interpretation and not misconduct. The Court of Appeals and this Commission have held that a pattern of denying parties their fundamental rights constitutes misconduct for which removal from office is warranted. Matter of Sardino, 58 NY2d 286 (1983); Matter of McGee, 59 NY2d 870 (1983).

Respondent also suggests that many of his difficulties stem from his unpleasant relationship with his co-judge and court staff. Personal frictions do not relieve a judge of the responsibility to administer the court properly and apply the law fairly. They do not excuse respondent's neglect of basic rights or his instruction that a clerk make and file falsified reports.

By the totality of his conduct, respondent has demonstrated himself to be unfit for judicial office.

By reason of the foregoing, the Commission determines that respondent should be removed from office.

Judge Alexander, Mr. Bromberg, Mrs. DelBello, Mr. Kovner, Judge Shea and Mr. Sheehy concur.

Mrs. Robb, Mr. Bower, Mr. Cleary and Judge Ostrowski dissent as to sanction and vote that the appropriate sanction is censure.

Judge Rubin was not present.

CERTIFICATION

This is to certify that the foregoing is the determination of the State Commission on Judicial Conduct pursuant to Section 44, subdivision 7, of the Judiciary Law of the State of New York.

Dated: April 9, 1984



Victor A. Kovner, Member
New York State Commission
on Judicial Conduct