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

CLAIR A. REYOME,

a Justice of the Malone Town Court, Franklin 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

John E. Aber for Respondent

The respondent, Clair A. Reyome, a justice of the Malone Town Court, Franklin County, was served with a Formal Written Complaint dated February 6, 1987, alleging that he improperly released on bail a defendant whose case was pending

in another court. Respondent filed an answer dated April 6, 1987.

By order dated April 8, 1987, the Commission designated H. Wayne Judge, Esq., as referee to hear and report proposed findings of fact and conclusions of law. A hearing was held on June 1 and 2, 1987, and the referee filed his report with the Commission on August 19, 1987.

By motion dated October 7, 1987, the administrator of the Commission moved to confirm the referee's report and for a finding that respondent be censured. Respondent opposed in part and supported in part the motion in papers dated October 21, 1987. Oral argument was waived.

On November 13, 1987, the Commission considered the record of the proceeding and made the following findings of fact.

1. Respondent is a justice of the Malone Town Court and has been since September 22, 1970.

2. On July 12, 1986, respondent received a telephone call at home from Ellsworth N. Lawrence, a Malone attorney, former Franklin County district attorney and judge of the Franklin County Court from 1950 to 1977. Respondent had known Mr. Lawrence for more than 30 years.

3. Mr. Lawrence asked respondent to meet him at respondent's court, and respondent agreed.

4. Respondent met Mr. Lawrence at the court. Mr. Lawrence had been retained to represent Michael Dumas, who had been charged in the Town of Westville, Franklin County, with Rape, Second Degree, a felony. Mr. Dumas' parents accompanied Mr. Lawrence to respondent's court.

5. Because the Westville town justice was unavailable, Mr. Dumas had been arraigned earlier in the day before Bangor Town Justice Esther F. Holmes. Judge Holmes had set bail at $5,000 cash or insurance company bond and had committed Mr. Dumas to jail in lieu of bail.

6. Mr. Lawrence advised respondent that the bail was $5,000 cash or insurance company bond and appealed to respondent to accept a property bond for the release of Mr. Dumas.

7. Respondent then called Judge Holmes by telephone and suggested to her that the bail was too high.

8. Judge Holmes advised respondent that she had set bail at $5,000 cash or insurance company bond and would not change it.

9. Respondent was aware that Mr. Lawrence did not want to make an application to Judge Holmes because he felt that she would deny it and that by coming to respondent, Mr. Lawrence was trying to circumvent Judge Holmes.

10. Respondent also spoke by telephone with Sheriff's Deputy Robert V. Gravel, who informed him that it was the jail's policy not to accept property undertakings. Deputy Gravel

indicated that he would need cash bail or a court order in order to release Mr. Dumas.

11. Respondent then witnessed the signatures of Mr. Dumas' parents on a property undertaking and signed a bail order. Respondent also signed an order discharging Mr. Dumas from custody because he did not know whether the property undertaking would be sufficient to obtain Mr. Dumas' release. Respondent turned the papers over to Mr. Lawrence.

12. Respondent is not a lawyer. He relied on Mr. Lawrence because of his knowledge and respect for the former judge. Respondent believed that Mr. Lawrence would not ask him to act in the matter if he was not authorized to do so.

13. When respondent signed the release orders, he did not have a copy of the felony complaint, a supporting deposition or the commitment order and did not know what the charge was against Mr. Dumas.

14. Respondent did not notify the district attorney's office of the application and did not offer the prosecution the opportunity to be heard, as required by Section 530.20(2)(b)(i) of the Criminal Procedure Law.

15. Respondent did not obtain a report of the defendant's criminal history, as required by Section 530.20(2)(b)(ii) of the Criminal Procedure Law.

16. Respondent knew when he signed the orders that the defendant was planning to leave the state.

17. Respondent did not retain the property undertaking and did not know of its whereabouts.

18. Mr. Dumas was released from custody on respondent's order later that evening.

19. After she learned of Mr. Dumas' release, Judge Holmes called respondent by telephone and asked him whether he had released the defendant. Respondent was not candid with Judge Holmes. He failed to inform her that he had ordered Mr. Dumas' release. Respondent told Judge Holmes only that he had acknowledged signatures on a property undertaking.

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. The charge in the Formal Written Complaint is sustained, and respondent's misconduct is established.

Without jurisdiction to do so, respondent released a defendant who had been jailed by another judge. He did so knowing that defense counsel was seeking this relief from respondent only because he could not get it from the arraigning judge. Respondent did not allow the prosecution the opportunity to be heard and failed to follow other steps the law requires of a judge in considering bail applications. By this extraordinary

procedure, respondent engaged in serious misconduct. Matter of Lombardi, 1987 Annual Report 105 (Com. on Jud. Conduct, Jan. 2, 1986); Matter of Winick, unreported (Com. on Jud. Conduct, Jan. 29, 1987).

In considering sanction, we must examine several mitigating factors. It appears that respondent acted on the misguided advice of Mr. Lawrence, who, unlike respondent, was a lawyer with many years of service as a judge on a court with appellate authority over respondent's court. In addition, the misconduct involved but a single transaction in respondent's long and unblemished career on the bench. See, Matter of Edwards v. State Commission on Judicial Conduct, 67 NY2d 153 (1986).

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

Mr. Bower, Judge Ciparick, Mr. Cleary, Judge Rubin, Judge Shea and Mr. Sheehy concur.

Mrs. Robb, Mrs. DelBello and Mr. Kovner dissent as to sanction only and vote that respondent be removed from office.

Mr. Bromberg and Judge Ostrowski 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 7, of the Judiciary Law.

Dated: December 24, 1987

John J. Sheehy, Esq., Member
New York State
Commission on Judicial Conduct

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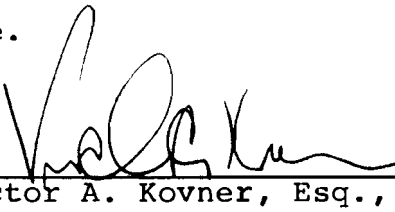
DISSENTING OPINION BY MR. KOVNER IN WHICH MRS. ROBB AND MRS. DEL BELLO JOIN

In my view, the determination fails to express the seriousness of the misconduct. Respondent's initial call to Judge Holmes, standing alone, constituted favoritism which would warrant, though not require, removal. Matter of Reedy v. State Commission on Judicial Conduct, 64 NY2d 299 (1985); Matter of Edwards v. State Commission on Judicial Conduct, 67 NY2d 153 (1986). The subsequent ultra vires execution of the bail order for the release of a defendant not within his jurisdiction was a blatant abuse of judicial authority. The mitigating factors noted in the determination do not alleviate the outrageousness of the action. While failure to contact the district attorney and to obtain a criminal history might be viewed as procedural errors by a lay justice, the fact that he knew that the defendant in the rape prosecution was planning to leave the state presents a context from which no person fit to serve as a justice could have been unaware of the impropriety involved. Lastly, the subsequent misleading of Judge Holmes confirms that the respondent was aware of his wrongdoing at the time.

Under these circumstances, I believe the appropriate sanction should be removal from office.

Dated: December 24, 1987



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