

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

THOMAS A. ROBERTIELLO,

a Justice of the Rochester
Town Court, Ulster 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 (Cathleen S. Cenci, Of Counsel) for the
Commission

David H. Greenwald (Susan Shaw, Of Counsel) for
Respondent

The respondent, Thomas A. Robertiello, a justice of
the Rochester Town Court, Ulster County, was served with a
Formal Written Complaint dated February 4, 1987, alleging that
he improperly presided over and disposed of a traffic case.
Respondent filed an answer dated February 12, 1987.

By order dated March 9, 1987, the Commission designated John T. O'Friel, Esq., as referee to hear and report proposed findings of fact and conclusions of law. A hearing was held on April 23 and 24, 1987, and the referee filed his report with the Commission on September 30, 1987.

By motion dated November 18, 1987, the administrator of the Commission moved to confirm the referee's report and for a finding that respondent be removed from office. Respondent opposed the motion on December 10, 1987. The administrator filed a reply on January 4, 1988.

On January 15, 1988, the Commission heard oral argument, at which respondent and his counsel appeared, and thereafter considered the record of the proceeding and made the following findings of fact.

1. Respondent is a justice of the Rochester Town Court and has been since January 1, 1982.

2. On October 23, 1985, Elizabeth Kawalchuk was issued a ticket in the Town of Rochester for Failure To Yield Right Of Way.

3. Ms. Kawalchuk owns Betty Kawalchuk Realty. Respondent's wife, Barbara, is a sales representative for Betty Kawalchuk Realty and has been since July 7, 1985. Ms. Robertiello is paid commissions by Ms. Kawalchuk for the sales she makes for the realty business.

4. Ms. Kawalchuk's ticket was returnable in respondent's court on November 13, 1985. Respondent was not scheduled to sit on November 13, 1985.

5. After receiving the ticket on October 23, 1985, Ms. Kawalchuk went to respondent's court and told respondent that she could not appear on November 13, 1985. Although the case was scheduled before another judge, respondent accepted a not guilty plea from Ms. Kawalchuk and scheduled a trial for November 6, 1985.

6. The November 6 trial date was subsequently adjourned. However, the arresting officer who was assigned to prosecute the case was never notified of an adjourned date.

7. While the case was pending, respondent's wife discussed the matter with him. She told respondent that Ms. Kawalchuk was upset about receiving the ticket, that she did not feel that she deserved the ticket and that the arresting officer had not properly investigated the incident.

8. Respondent recorded or caused to be recorded in his court records that he dismissed the case for failure to prosecute on December 18, 1985, notwithstanding that the arresting officer was not notified that the case would be heard on that date, that the arresting officer was in respondent's court before another judge on that date and that the case was never called on that date.

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), 100.3(a)(4) and 100.3(c)(1) of the Rules Governing Judicial Conduct and Canons 1, 2, 3A(1), 3A(4) and 3C(1) of the Code of Judicial Conduct. The charge in the Formal Written Complaint is sustained as amended at the hearing, and respondent's misconduct is established.

Respondent should not have presided over the Kawalchuk case. It was scheduled before another judge. Even if it had been properly before him, respondent should have disqualified himself inasmuch as the defendant was his wife's employer and his impartiality could reasonably be questioned. Section 100.3(c)(1) of the Rules Governing Judicial Conduct.

Instead, respondent reached out for the case, never notified the prosecution that it was to be heard and then improperly dismissed it on the specious ground of failure to prosecute.

These circumstances lead to the inescapable conclusion that respondent fixed the case as a favor to his wife's employer. Such conduct by a judge is wrong and has always been wrong. Matter of Byrne, 47 NY2d (b) (Ct. on the Judiciary 1979). It has long been condemned by the courts and this Commission. Matter of Reedy v. State Commission on Judicial Conduct, 64 NY2d 299 (1985); Matter of La Carrubba, 49 NY2d (p)

(Ct. on the Judiciary 1980); "Ticket-Fixing: The Assertion of Influence in Traffic Cases," Interim Report by the State Commission on Judicial Conduct (June 20, 1977).

Although ticket-fixing may warrant removal for even a single transgression, (Reedy, supra at 302), we have considered mitigating factors in respondent's past. See Matter of Edwards v. State Commission on Judicial Conduct, 67 NY2d 153, 155 (1986).

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

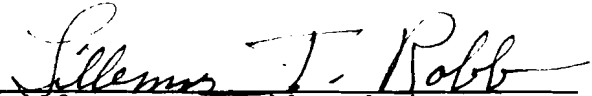
Mrs. Robb, Mr. Bower, Judge Ciparick, Mrs. DelBello, Judge Ostrowski, Judge Rubin, Judge Shea and Mr. Sheehy concur.

Mr. Cleary and Mr. Kovner 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: February 23, 1988


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