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

DONALD R. ROBERTS,

a Justice of the Malone Village Court, Franklin County.

Determination

THE COMMISSION:

Henry T. Berger, Esq., Chair
Stephen R. Coffey, Esq.
Mary Ann Crotty
Lawrence S. Goldman, Esq.
Honorable Daniel F. Luciano
Honorable Frederick M. Marshall
Honorable Juanita Bing Newton
Alan J. Pope, Esq.
Honorable Eugene W. Salisbury
Barry C. Sample
Honorable William C. Thompson

APPEARANCES:

Gerald Stern (Cathleen S. Cenci, Of Counsel) for the Commission

Hinman, Straub, Pigors & Manning, P.C. (By Peter L. Rupert) for Respondent

The respondent, Donald R. Roberts, a justice of the Malone Village Court, Franklin County, was served with a Formal Written Complaint dated February 23, 1996,

alleging bias and improper demeanor in connection with a number of cases. Respondent filed an answer dated March 26, 1996.

By order dated April 4, 1996, the Commission designated Paul A. Feigenbaum, Esq., as referee to hear and report proposed findings of fact and conclusions of law. A hearing was held on July 11 and 12, 1996, and the referee filed his report with the Commission on October 25, 1996.

By motion dated November 20, 1996, the administrator of the Commission moved to confirm the referee's report and for a determination that respondent be removed from office. Respondent opposed the motion on December 10, 1996. The administrator filed a reply dated December 13, 1996.

On March 27, 1997, 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.

As to Charge I of the Formal Written Complaint:

1. Respondent has been a justice of the Malone Village Court since August 1, 1993. He is not a lawyer but has attended all required training offered by the Office of Court Administration. He was a state trooper from 1966 to 1991.

2. On August 1, 1994, David A. Metz was charged with Assault, Third Degree, in the Village of Malone on the complaint of his wife, Karyn E., who alleged that he had knocked her to the floor, kicked her in the stomach, choked her and again pushed her to the floor as she tried to rise. Ms. Metz claimed that she had been treated at a hospital for bruises.

3. Respondent arraigned Mr. Metz, released him on his own recognizance and verbally ordered him to stay away from the home.

4. A few days later, Ms. Metz came to court and asked respondent to issue an Order of Protection in her favor against her husband. Respondent refused.

5. While the case was pending, respondent received a letter from the District Attorney's Office concerning orders of protection. In connection with the letter, respondent, in a serious tone, said to his court clerk, "...[E]very woman needs a good pounding every now and then."

6. Later in August 1994, respondent said several times to the clerk, Sue Ellen Tupia, that he felt that orders of protection "...were not worth anything because they are just a piece of paper," that they are "a foolish and unnecessary thing," and that they are "useless" and of "no value."

7. Respondent also once said to his fellow judge, Andrew Simays, "I think these orders of protection are a waste of time."

8. On September 11, 1994, Ms. Metz again complained to the police about a domestic dispute involving her husband. She asked that David Metz be removed from their home, but Clyde LaChance, the police officer who responded, said that he could not order Mr. Metz to leave in the absence of an Order of Protection from the court. Ms. Metz then decided to take her children and leave the home.

As to Charge II of the Formal Written Complaint:

9. On March 8, 1994, Kay Glasgow came to respondent's court to pay a fine for her husband, Silas, who had been convicted by respondent of dog-control violations. Ms. Glasgow complained to a court clerk about the amount of the fine and asserted that she should not have to pay it.

10. Respondent emerged from his chambers and loudly and rudely began to criticize Ms. Glasgow in the presence of two court clerks and members of the public. Respondent attacked Ms. Glasgow's management of a bar and accused her of getting "high" from fights that took place there and accused her of letting the dog free in order to spite her husband. When Ms. Glasgow opened her purse to pay the fine from bar receipts that she was planning to deposit in the bank, respondent confronted her and accused her of generating crime by carrying so much cash. His remarks reduced Ms. Glasgow to tears.

As to Charge III of the Formal Written Complaint:

11. In March 1994, a civil claim was filed in respondent's court by a dentist named Gallagher, who was suing Michael Dias for an unpaid bill for services to his wife.

12. Dr. Gallagher had been respondent's dentist for six years, and respondent had been treated about a year before the proceeding. Respondent's wife and five children also were patients of Dr. Gallagher.

13. Mr. Dias appeared before respondent in chambers on his own behalf. Dr. Gallagher was not present but was represented by an attorney.

14. Mr. Dias asked why the dentist was not present. Respondent, who believed that Mr. Dias was from New York City, loudly told Mr. Dias that he was "not from around here and that's not the way we do things around here."

15. Respondent said that he wanted the claim settled.

16. Mr. Dias asked why he was being sued since the services had been rendered to his wife. Respondent replied that Mr. Dias was the "breadwinner" in the family, although he had no knowledge of the family's finances.

17. Mr. Dias insisted that Dr. Gallagher be present and said that he wanted to subpoena him. If he did, respondent said inaccurately, Mr. Dias would have to pay for the dentist's lost earnings for his time in court and would have to pay him a fee as an expert witness.

18. Respondent never told Mr. Dias that Dr. Gallagher was his family dentist, never offered to disqualify himself and never disqualified himself from the case. It was later discontinued.

19. Respondent did not testify candidly at the hearing concerning Dias. Concerning his erroneous statements that Mr. Dias must pay for Dr. Gallagher's time and lost earnings, respondent claimed that this was his first civil case as a judge and that he didn't know proper procedure. When confronted on cross-examination with records of his court, he admitted that he had heard more than a dozen prior civil cases. Respondent also testified at the hearing that, when the case was before him, he had not been conscious that Dr. Gallagher was his own dentist, even though he had been treated by Dr. Gallagher for six years, including a visit about a year prior to the proceeding, and even though all of respondent's family members were also patients of Dr. Gallagher.

As to Charge IV of the Formal Written Complaint:

20. On April 11, 1994, after waiving her right to counsel, Kimberley McAllister pleaded guilty before respondent to Theft Of Services on a complaint that she had failed to pay a cab fare of $1.50. Respondent sentenced her to a conditional discharge, restitution (which she had already paid) and a $90 surcharge. Ms. McAllister said that she was a social services recipient and agreed to pay the surcharge in bi-weekly installments of $20 each.

21. On April 25, 1994, when the first installment was due, Ms. McAllister came to court but had only $5, which she paid to the court clerk, promising to make the remainder of the payment the following week.

22. The following day, respondent discovered that Ms. McAllister had paid only $5. He became angry and signed an arrest warrant for "failure to pay fine." Ms. McAllister was notified of the warrant by police and turned herself in half-an-hour later.

23. Ms. McAllister was brought to respondent's chambers. He loudly and angrily told her that he had about 300 people who owed fines to the court and that he was going to make "an example" of her. Ms. McAllister was intimidated and began to cry.

24. Respondent summarily sentenced Ms. McAllister to 89 days in jail pending payment of the fine. He did not advise her that she had the right to counsel or to have an attorney appointed by the court if she was unable to afford one, as required by CPL 170.10(4)(a). He knew that she was not employed but did not inquire into her financial status, did not advise her that she had the right to apply to be resentenced if she could not pay and did not conduct a hearing before resentencing Ms. McAllister, as required by CPL 420.10(5).

25. Respondent imposed the 89-day sentence so that he would not have to obtain a presentence report from the probation department.

As to Charge V of the Formal Written Complaint:

26. The charge is not sustained and is, therefore, dismissed.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated the Rules Governing Judicial Conduct then in effect, 22 NYCRR 100.1, 100.2(a), 100.3(a)(1)*, 100.3(a)(3)** and 100.3(c)(1)***, and Canons 1, 2A, 3A(1), 3A(3) and 3C(1)(a) of the Code of Judicial Conduct. Charges I, II, III and IV of the Formal Written Complaint are sustained insofar as they are consistent with the findings herein, and respondent's misconduct is established. Charge V is dismissed.

The record depicts a biased, mean-spirited and bullying judge who, in a number of cases, abandoned his proper role as a neutral and detached magistrate (see, Matter of Wood, 1991 Ann Report of the NY Commn on Jud Conduct, at 82, 86).

The Court of Appeals has held:

> The ability to be impartial is an indispensable requirement for a judicial officer. Equally important is

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* Now Section 100.3(B)(1)
** Now Section 100.3(B)(3)
*** Now Section 100.3(E)(1)

> the requirement that a Judge conduct himself in such a way that the public can perceive and continue to rely upon the impartiality of those who have been chosen to pass judgment on legal matters involving their lives, liberty and property.
>
> (Matter of Sardino v State Commission on Judicial Conduct, 58 NY2d 286, 291-92)

Respondent's anger at Ms. McAllister's inability to pay her fine prompted him to disregard the law and her fundamental rights and to sentence her to jail on a minor offense in order to make an example of her. Similarly, he lost his temper with Ms. Glasgow when she challenged a fine that he had levied and publicly intimidated and embarrassed her in a manner unbecoming a judge. (See, Matter of Tavormina, 1990 Ann Report of NY Commn on Jud Conduct, at 164).

Respondent's remark that "every woman needs a good pounding every now and then," was intemperate and insensitive to the victims of domestic violence. Taken with his other contemporaneous pronouncements concerning the worth of orders of protection, he cast doubt on his decision in Metz to refuse to protect a woman who had required hospital treatment because of the alleged physical abuse of her husband. (See, Matter of Bender, 1993 Ann Report of NY Commn on Jud Conduct, at 54; Matter of Chase, 1992 Ann Report of NY Commn on Jud Conduct, at 41).

The circumstances of the Dias case also portray a partial judge attempting to prejudice the rights of one party to a dispute. Respondent failed to disclose that the plaintiff was his family dentist. (See, Matter of Fabrizio v State Commission on Judicial Conduct, 65 NY2d 275, 276-77). He showed favoritism by insisting that the dentist's presence was not required

and by attempting to discourage the defendant from calling him. He furthered the appearance of bias by telling the defendant that he was "not from around here and that's not the way we do things around here."

By this conduct, respondent has shown that he poses a threat to the proper administration of justice and is not fit to be a judge. (See, Matter of Vonder Heide v State Commission on Judicial Conduct, 72 NY2d 658, 661). Moreover, his lack of candor at the hearing exacerbates his wrongdoing. (See, Matter of Gelfand v State Commission on Judicial Conduct, 70 NY2d 211, 216).

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

Mr. Berger, Mr. Coffey, Ms. Crotty, Judge Newton, Mr. Pope, Judge Salisbury and Judge Thompson concur as to sanction.

Judge Salisbury dissents as to Charge I only and votes that the charge be dismissed.

Mr. Pope dissents as to Charge II only and votes that the charge be dismissed.

Mr. Goldman dissents as to Charge I and votes that the charge be dismissed and dissents as to sanction and votes that respondent be censured.

Judge Luciano, Judge Marshall and Mr. Sample 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: May 29, 1997

Henry T. Berger, Esq., Chair
New York State
Commission on Judicial Conduct