

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

BENNO G. SPIEHS,

a Justice of the Willet Town
Court, Cortland 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 (John J. Postel, Of Counsel) for the
Commission

Morris and Morris (By James E. Morris) for
Respondent

The respondent, Benno G. Spiehs, a justice of the
Willet Town Court, Cortland County, was served with a Formal
Written Complaint dated September 8, 1986, alleging that he
failed to properly perform his judicial duties in connection

with a civil case in his court. Respondent filed an answer dated November 13, 1986.

On July 3, 1987, the administrator of the Commission, respondent and respondent's counsel entered into an agreed statement of facts pursuant to Section 44, subdivision 5, of the Judiciary Law, waiving the hearing provided for by Section 44, subdivision 4, of the Judiciary Law and stipulating that the Commission make its determination based on the pleadings and the agreed upon facts. The Commission approved the agreed statement on July 20, 1987.

The administrator and respondent submitted memoranda as to sanction. Oral argument was waived.

On August 28, 1987, the Commission considered the record of the proceeding and made the following findings of fact.

1. Respondent is a justice of the Willet Town Court and has been since January 1980.

2. On July 18, 1984, Catherine Lee Cobb met with respondent to discuss filing a claim against her parents, Jack and Camilla Cobb. Catherine Cobb alleged that her parents had failed to honor a verbal agreement made in 1973 to repay her student loan on the promise that she attend a particular school not of her own choosing.

3. Respondent advised Catherine Cobb to commence a small claims action in his court, notwithstanding that the

amount she alleged was owed her, \$2,500, exceeded the \$1,500 monetary limitation for small claims cases, as defined by Section 1801 of the Uniform Justice Court Act.

4. Catherine Cobb commenced the action on August 10, 1984, by sending a small claims filing fee to respondent.

5. On October 1, 1984, respondent sent by first-class mail a "Summons With Notice" to Jack and Camilla Cobb. Respondent did not send notice of the action by certified mail with return receipt requested, as required by Section 1803 of the Uniform Justice Court Act.

6. On October 13, 1984, Jack and Camilla Cobb appeared at respondent's home, advised him that they intended to retain an attorney and were granted an adjournment.

7. Respondent told the defendants that he had "proof" that they had co-signed their daughter's student loan application and showed them a copy of the application.

8. On October 28, 1984, Camilla Cobb wrote to respondent and requested that he provide her and her attorney, Russell E. Ruthig, with copies of the student loan application. Respondent subsequently sent two copies to Camilla Cobb.

9. On November 13, 1984, Camilla Cobb contacted respondent and obtained an adjournment of the matter to November 21, 1984, and asked that future correspondence be addressed to Mr. Ruthig. Respondent notified Catherine Cobb of the adjournment.

10. On November 20, 1984, Mr. Ruthig wrote to respondent and requested that he be served with a copy of the complaint. Respondent did not receive the letter until after the scheduled court date, November 21, 1984.

11. On November 21, 1984, Catherine Cobb appeared in respondent's court. Neither the defendants nor their attorney were present. Respondent granted Catherine Cobb a default judgment of \$2,500 plus interest. Respondent told Ms. Cobb that he would issue a transcript of judgment when he obtained the proper form.

12. Respondent received Mr. Ruthig's letter after the hearing date but did not respond and did not notify him of the default judgment.

13. Between November 1984 and April 1985, Ms. Cobb made approximately ten requests of respondent for a transcript of judgment. He did not provide one, as required by Section 1502(a) of the Uniform Justice Court Act.

14. On April 10, 1985, respondent issued a transcript of judgment to Catherine Cobb, postdated to November 24, 1984, listing no judgment creditor and indicating that the total amount of judgment was "total amount due of education loan."

15. On April 11, 1985, the Cortland County Clerk's Office returned the transcript of judgment to respondent and advised him that it was not acceptable for filing.

16. On June 1, 1985, Catherine Cobb learned that the county clerk's office had no record of a judgment in the case. She notified respondent.

17. On June 14, 1985, respondent revised the transcript of judgment, naming Marine Midland Bank of Buffalo as judgment creditor and listing the amount of judgment as \$5,264.33.

18. On July 10, 1985, Mr. Ruthig wrote to respondent, questioning the revised judgment filed against his clients and asking that it be vacated. Mr. Ruthig advised respondent that his clients had never been notified of any action by Marine Midland Bank and had never been properly served with a summons.

19. On September 20, 1985, Mr. Ruthig again wrote to respondent.

20. On September 25, 1985, respondent signed an order vacating the judgment and sent it to Mr. Ruthig. Catherine Cobb was not notified of Mr. Ruthig's request to vacate the judgment, was not given an opportunity to be heard and was not advised that the judgment had been vacated.

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)(4), 100.3(a)(5) and 100.3(b)(1) of the Rules Governing Judicial Conduct and Canons 1, 2A, 3A(1), 3A(4), 3A(5) and 3B(1) of the Code of Judicial

Conduct. The charge in the Formal Written Complaint is sustained insofar as it is consistent with the findings enumerated herein, and respondent's misconduct is established.

In a single case, respondent committed a series of legal and administrative errors which were prejudicial to the parties and the proper administration of justice. Collectively, the record reflects substantial disregard of the law and neglect of official duties, in violation of Sections 100.3(a)(1), 100.3(a)(5) and 100.3(b)(1) of the Rules Governing Judicial Conduct.

Although isolated errors or delays are matters for appellate review or administrative action, the pattern of mistakes and procrastination evident in the handling of the Cobb case indicates respondent's inattention to proper procedure and neglect of duty and, thus, constitutes misconduct. Matter of Dougherty, 1985 Annual Report 123 (Com. on Jud. Conduct, Apr. 16, 1984).

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

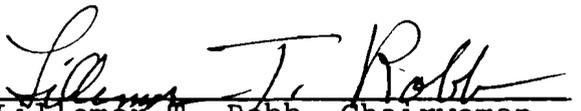
Mrs. Robb, Mr. Bower, Judge Ciparick, Mrs. DelBello, Mr. Kovner, Judge Ostrowski, Judge Rubin, Judge Shea and Mr. Sheehy concur.

Mr. Bromberg and Mr. Cleary 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: October 28, 1987


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