

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

JOHN P. TOBEY, *

a Justice of the Wheatfield Town Court,
Niagara County.

THE COMMISSION:

Mrs. Gene Robb, Chairwoman
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 (John J. Postel, Of Counsel) for the
Commission

Benjamin N. Hewitt for Respondent

The respondent, John P. Tobey, a justice of the
Wheatfield Town Court, Niagara County, was served with a Formal
Written Complaint dated October 24, 1984, alleging that he signed

* The pleadings were originally filed in the name of John
"B." Tobey. They were amended at the hearing to reflect
respondent's accurate middle initial.

arrest warrants in a case in which his sister-in-law was the complainant and in a case in which respondent was the complainant. Respondent filed an answer dated November 15, 1984.

By order dated November 29, 1984, the Commission designated Grace Marie Ange, Esq., as referee to hear and report proposed findings of fact and conclusions of law. A hearing was held on February 22, 1985, and the referee filed her report with the Commission on May 14, 1985.

By motion dated June 11, 1985, the administrator of the Commission moved to confirm in part and disaffirm in part the referee's report, to adopt additional findings and conclusions and for a finding that respondent be admonished. Respondent did not file any papers in response thereto and waived oral argument. On July 19, 1985, the Commission considered the record of the proceeding and made the following findings of fact.

As to Charge I of the Formal Written Complaint:

1. Respondent is a justice of the Wheatfield Town Court and has been since January 1, 1982.
2. On March 18, 1982, Anthony T. Carella installed a sewer on the property of a neighbor of Darlene Barone in the Town of Wheatfield.
3. Ms. Barone complained that Mr. Carella damaged her property while installing the sewer.
4. Ms. Barone is respondent's sister-in-law.

5. At about 4:30 P.M. on March 18, 1982, Ms. Barone called respondent.

6. Ms. Barone was upset, and respondent told her that he would go to her home.

7. Ms. Barone had also called the state police. Trooper Darrell McCoy was at her home when respondent arrived.

8. Respondent talked to his sister-in-law about the incident, examined the alleged damage to Ms. Barone's property and returned to his home.

9. After respondent returned home, Trooper McCoy arrived and asked respondent to sign a warrant for Mr. Carella's arrest.

10. Respondent subscribed an information signed by his sister-in-law and signed a warrant for Mr. Carella's arrest.

11. Respondent took no further action with respect to the case.

12. Trooper McCoy then contacted Mr. Carella and asked him to turn himself in at state police barracks.

13. Mr. Carella turned himself in, was arraigned before another judge, and the case was subsequently dismissed.

14. At the time, respondent saw no impropriety in his execution of the arrest warrant but now realizes that it was wrong.

As to Charge II of the Formal Written Complaint:

15. On September 29, 1983, Kenneth O'Bara came to respondent's home.

16. Mr. O'Bara requested the return of \$250 bail he had posted on behalf of Norman Pease, a defendant in respondent's court.

17. Respondent told Mr. O'Bara that he was entitled to return of the bail but indicated that respondent would have to issue a warrant for Mr. Pease's arrest to assure his appearance in court.

18. Respondent testified that Mr. O'Bara responded with obscenities, and respondent asked him to leave.

19. Respondent was upset by Mr. O'Bara's remarks because they were made in the presence of his eight-year-old daughter.

20. Respondent called the Niagara County Sheriff's Department.

21. Deputy Sheriff Randall F. Scherrer came to respondent's home, and respondent executed an information accusing Mr. O'Bara of Harassment.

22. Respondent also executed a warrant for Mr. O'Bara's arrest.

23. At the time, respondent saw no impropriety in executing the arrest warrant but now realizes that it was wrong.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 100.1, 100.2, 100.3(c)(1)(i) and 100.3(c)(1)(iv) of the Rules Governing Judicial Conduct and Canons 1, 2, 3C(1)(a) and 3C(1)(d) of the Code of Judicial Conduct. Charges I and II of the Formal Written Complaint are sustained, and respondent's misconduct is established.

A judge is required to disqualify himself or herself in a case in which the judge's impartiality might reasonably be questioned, including circumstances in which the judge has personal knowledge concerning the proceeding or in which the judge is related to a material witness. Section 100.3(c)(1) of the Rules Governing Judicial Conduct.

Respondent had personal knowledge of the facts in the Carella and O'Bara matters and in Carella was related to the complaining witness. By signing arrest warrants in these cases, respondent clearly violated the above-stated rule. Matter of Sims v. State Commission on Judicial Conduct, 61 NY2d 349, 353-55 (1984); Matter of Scacchetti, 2 Commission Determinations 423 (June 10, 1981); Matter of DelPozzo, unreported (Com. on Jud. Conduct, Jan. 25, 1985).

Respondent's misconduct is mitigated by the facts that he took no action in the cases beyond signing the arrest warrant and that he now realizes that even that action was improper.

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

Mrs. Robb, Mr. Bromberg, Mr. Cleary, Mrs. DelBello, Mr. Kovner, Judge Ostrowski and Judge Shea concur.

Mr. Bower and Mr. Sheehy dissent as to sanction only and vote that respondent be issued a confidential letter of dismissal and caution.

Judge Rubin was 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: September 19, 1985


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