

**State of New York**  
**Commission on Judicial Conduct**

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In the Matter of the Proceeding Pursuant to Section 44,  
subdivision 4, of the Judiciary Law in Relation to

**Determination**

ALMON L. WAIT,

a Justice of the Waverly Town Court,  
Franklin County.

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**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 (Henry S. Stewart, Of Counsel)  
for the Commission

Donald T. Kinsella for Respondent

The respondent, Almon L. Wait, a justice of the Waverly Town Court, Franklin County, was served with a Formal Written Complaint dated October 19, 1984, alleging that he presided over several cases in which the defendants were relatives of respondent. Respondent filed an answer dated November 3, 1984.

On May 16, 1985, 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 in 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 May 30, 1985.

The administrator and respondent filed memoranda as to sanction. On June 20, 1985, the Commission heard oral argument, at which respondent appeared by counsel, and thereafter considered the record of the proceeding and made the following findings of fact.

Preliminary findings:

1. Respondent is a justice of the Waverly Town Court and has been since January 1, 1972.
2. Respondent has been married since April 10, 1948, to the former Jennie Susice.

As to Charge I of the Formal Written Complaint:

3. On November 8, 1983, Leo J. Patnode, Jr., appeared before respondent on a charge of Speeding.
4. Mr. Patnode is respondent's nephew.
5. Mr. Patnode pled guilty to the Speeding charge.

6. On his own motion, respondent reduced the charge to Driving With an Inadequate Muffler and imposed an unconditional discharge.

7. Respondent reduced the charge because he had personal knowledge of the defendant's financial difficulties, knew that a conviction would mean an increase in the defendant's automobile insurance premiums and "didn't feel he needed any more problems."

8. Respondent testified before a member of the Commission that he had contacted the district attorney about the reduction in the Patnode case and obtained the prosecutor's consent.

9. Neither the district attorney nor the arresting officer has any record or recollection of consulting with respondent or consenting to a reduction in the Patnode case.

10. Respondent did not advise the district attorney that Mr. Patnode was respondent's nephew.

As to Charge II of the Formal Written Complaint:

11. On March 25, 1982, Tawney M. Susice was ticketed for Speeding. The ticket was returnable in respondent's court on March 30, 1982.

12. Ms. Susice is the niece of respondent's wife.

13. On March 26, 1982, four days before the return date of the ticket, Ms. Susice went to respondent's court and asked respondent what he could do about the ticket.

14. Respondent arraigned Ms. Susice on the Speeding charge. She pled guilty.

15. On his own motion, respondent reduced the Speeding charge to Driving With an Inadequate Muffler and imposed a \$25 fine.

16. Respondent reduced the charge because he had personal knowledge of the defendant's financial problems and was concerned that a conviction would result in an increase in her insurance premiums.

17. Neither the district attorney nor the arresting officer were present at the disposition of Ms. Susice's case. Respondent did not inform them of the proceeding or obtain their consent to the reduction of the charge.

As to Charge III of the Formal Written Complaint:

18. On October 6, 1982, Gabriel Susice appeared before respondent on a charge of Hunting Migratory Birds After Sunset.

19. Mr. Susice is the first cousin of respondent's wife.

20. Mr. Susice pled guilty to the charge, and respondent imposed an unconditional discharge.

21. Respondent testified that the officer who issued the ticket to Mr. Susice appeared in court and consented to dismissal of the case.

22. The officer, Gary Mulverhill, believes that he did not appear in court and never consented to dismissal or a reduction of the charge.

As to Charge IV of the Formal Written Complaint:

23. On January 3, 1981, Kevin Susice appeared in respondent's court on a charge of Trespassing.

24. Mr. Susice was the first cousin of respondent's wife.

25. Mr. Susice pled guilty to the charge.

26. The charge against Mr. Susice was based on a complaint by Jean R. Prior. Ms. Prior's husband, Richard, is a justice of respondent's court.

27. Before the arraignment of Kevin Susice, respondent called Ms. Prior, and she stated that she wanted Mr. Susice to stay off her property.

28. Based on his conversation with Ms. Prior, respondent disposed of the case without imposing a fine or jail sentence and ordered Mr. Susice to stay off the Prior property.

As to Charge V of the Formal Written Complaint:

29. On April 3, 1979, Ronald N. Susice appeared in respondent's court on a charge of Driving an Uninspected Motor Vehicle.

30. Mr. Susice is the first cousin of respondent's wife.

31. Mr. Susice presented proof that his car had been inspected after he was ticketed.

32. Respondent imposed an unconditional discharge.

As to Charge VI of the Formal Written Complaint:

33. On May 9, 1973, Gale R. Susice appeared in respondent's court on a charge of Criminal Mischief.

34. Mr. Susice is the first cousin of respondent's wife.

35. Mr. Susice pled guilty to the charge.

36. Respondent imposed a \$50 fine but waived payment and ordered the defendant to perform labor for the Town of Waverly.

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

Respondent is prohibited from presiding over cases involving relatives within the sixth degree of relationship to him or his wife. Section 100.3(c)(1)(iv) of the Rules Governing Judicial Conduct. The prohibition clearly extends to respondent's nephew and the niece and first cousins of

respondent's wife. Nevertheless, respondent presided over and disposed of six cases involving those relatives.

He exacerbated his misconduct by hearing several of the matters outside the presence of a prosecutor and by granting, on his own motion, reductions of the charges or the penalties based on personal considerations without obtaining the consent of a prosecutor. In one case, he conducted an improper ex parte conversation with the complaining witness and based his disposition upon information obtained in the conversation.

Such egregious misconduct undermines public confidence in the integrity and impartiality of the judiciary and demonstrates unfitness for judicial office. Matter of Deyo, 2 Commission Determinations 270, 273 (Dec. 18, 1980); Matter of Pulver, 3 Commission Determinations 141, 143 (Nov. 12, 1982).

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

Mrs. Robb, Mr. Bower, Mr. Bromberg, Mr. Cleary, Mrs. DelBello, Mr. Kovner, Judge Ostrowski, Judge Shea and Mr. Sheehy concur, except that Judge Ostrowski dissents as to Charge VI only and votes that the charge be dismissed.


Judge Rubin was not present.

#### CERTIFICATION

It is certified that the foregoing is the determination of the State Commission Judicial Conduct, containing the findings

of fact and conclusions of law required by Section 44,  
subdivision 7, of the Judiciary Law.

Dated: August 5, 1985

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