

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

GERALD D. WATSON,

a Judge of the Lockport City
Court, Niagara County.

THE COMMISSION:

Mrs. Gene Robb, Chairwoman
Honorable Myriam J. Altman
Henry T. Berger, Esq.
John J. Bower, Esq.
Honorable Carmen Beauchamp Ciparick
E. Garrett Cleary, Esq.
Dolores Del Bello
Victor A. Kovner, Esq.
Honorable William J. Ostrowski
Honorable Isaac Rubin
John J. Sheehy, Esq.

APPEARANCES:

Gerald Stern (John J. Postel and Henry S. Stewart, Of
Counsel) for the Commission

William E. Smith for Respondent

The respondent, Gerald D. Watson, a judge of the
Lockport City Court, Niagara County, was served with a Formal
Written Complaint dated August 6, 1987, alleging that he failed
to disqualify himself in a case involving a friend and client,
that he practiced law in his own court and that he permitted

associates to appear in his court. Respondent filed an answer dated August 31, 1987.

By order dated September 15, 1987, the Commission designated C. Benn Forsyth, Esq., as referee to hear and report proposed findings of fact and conclusions of law.

By motion dated October 19, 1987, respondent moved to dismiss Charges II through V of the Formal Written Complaint. The administrator of the Commission opposed the motion on October 21, 1987. By determination and order dated December 23, 1987, the Commission granted respondent's motion to dismiss Charges II, III and IV of the Formal Written Complaint and reserved decision with respect to Charge V pending further submissions.

Respondent submitted additional papers received on January 4, 1988. Also on January 4, 1988, the administrator moved for leave to renew and reconsider the order as to Charges II, III and IV and for a finding that respondent's motion be dismissed in all respects. In papers dated January 12, 1988, respondent opposed the motion to renew and reconsider. The administrator filed a reply on January 13, 1988. By determination and order dated January 22, 1988, the Commission granted the motion to reconsider, affirmed its decision to dismiss Charges II, III and IV of the Formal Written Complaint and denied respondent's motion to dismiss Charge V.

A hearing was held on March 22 and 23, 1988, and the referee filed his report with the Commission on June 14, 1988.

By motion dated July 15, 1988, the administrator 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 removed from office. Respondent opposed the motion by cross motion on August 25, 1988. The administrator filed a reply on September 6, 1988. On September 22, 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.

As to Charge I of the Formal Written Complaint:

1. Respondent has been a judge of the Lockport City Court since January 1, 1984. He was also a judge of the court from 1962 to 1965 and from 1974 to 1980.

2. Respondent has known Beverly J. Johnston for more than twelve years. Respondent represented Ms. Johnston's parents in a legal matter, and he represented Ms. Johnston in three legal actions. They have been friends and have seen each other socially for more than twelve years.

3. On October 20, 1986, Ms. Johnston was charged with Driving While Intoxicated and Crossing A Double Line. From the police station, Ms. Johnston called respondent for advice as to

whether to take a breathalyzer test. Respondent came to the station and drove Ms. Johnston home.

4. Ms. Johnston retained another attorney to represent her. The matter was returnable in respondent's court, but he disqualified himself by telling the chief court clerk to have the other judge of the court, Amelia M. Sommer, handle the case.

5. On November 25, 1986, Ms. Johnston was again charged with Driving While Intoxicated.

6. The matter was placed by the chief clerk, Kathleen A. Chaplin, on Judge Sommer's court calendar for arraignment on December 1, 1986. Ms. Chaplin concluded that since respondent had disqualified himself from the first matter, Judge Sommer should handle the second case.

7. Judge Sommer was not in court on December 1, 1986. A court clerk, Cynthia M. Dershem, called Ms. Johnston's case after respondent's calendar had been completed. Ms. Johnston was not present. Respondent was on the bench. He did not disqualify himself from hearing the matter.

8. On December 2, 1986, Judge Sommer signed a bench warrant for the arrest of Ms. Johnston on the grounds that she had not appeared in court. Ms. Johnston was arrested and brought to police headquarters the same day.

9. From the police station, Ms. Johnston called respondent.

10. Respondent then spoke by telephone to Police Captain Henry Newman. Respondent was upset. He told the captain that Ms. Johnston's arrest was "a lot of crap," that a bench warrant should not have been issued and that Ms. Johnston should not have been arrested. He ordered Captain Newman to release her.

11. Captain Newman then went to the court clerk's office and told Ms. Chaplin that respondent had ordered Ms. Johnston released. Ms. Chaplin called Judge Sommer, who then spoke to the captain and told him to hold Ms. Johnston for arraignment.

12. Judge Sommer then came to court and arraigned Ms. Johnston. Ms. Johnston claimed that she had not appeared because the traffic ticket that she was issued contained no return date. The matter was adjourned. Ms. Johnston was released in her own recognizance, but Judge Sommer suspended and seized her driver's license.

13. Ms. Johnston subsequently notified respondent of the events of her arraignment.

14. On December 3, 1986, respondent came into court and demanded that Ms. Dershem and Ms. Chaplin tell him who had issued the warrant for Ms. Johnston. He maintained that the bench warrant should not have been issued, that Ms. Johnston's license should not have been taken and that he should have been notified of the warrant. Respondent was angry and upset during

this encounter; his voice was loud, and his face was red.

15. Respondent asked for the court file of the case, removed Ms. Johnston's driver's license and told the clerks that he was returning it to her. Respondent then went to Ms. Johnston's home and personally returned her driver's license.

16. On January 6, 1987, respondent formally disqualified himself from the case, and both Driving While Intoxicated charges against Ms. Johnston were transferred on January 7, 1987, to another court for disposition.

As to Charges II, III and IV of the Formal Written Complaint:

17. The charges were dismissed by determination and order dated December 23, 1987. The matter was reconsidered and the dismissal affirmed by determination and order dated January 22, 1988.

As to Charge V of the Formal Written Complaint:

18. Respondent is a part-time judge who also practices law in Lockport.

19. Before January 1, 1984, respondent was associated in the practice of law with Anthony C. Ben and Charles P. Ben. From 1972 to 1986, respondent and Anthony Ben also owned the building in which their offices are located.

20. When respondent took the bench on January 1, 1984, he and the Bens ended their joint law practice, but he continued to share office space in the building with the firm of Ben, Lerch and Ben. Respondent and the Ben firm continued to share library and storage facilities and, occasionally, secretarial services. They maintained a joint bank account to which each contributed funds for rent, copy machine, cleaning, utilities and library expenses. Respondent used a separate account for his supplies, stationery and other expenses related to his law practice.

21. Respondent and Anthony Ben also maintained a joint bank account as landlords from which expenses of the building were paid until Mr. Ben relinquished his interest in 1986.

22. In 1984, respondent permitted Anthony or Charles Ben to practice before him in nine civil cases, as denominated in Schedule A appended hereto.

23. On March 18, 1986, respondent was ordered by Acting Supreme Court Justice Charles J. Hannigan to hear and dispose of matters brought by Anthony Ben in respondent's court.

24. Paragraph 16 of Charge V of the Formal Written Complaint is not sustained and is, therefore, dismissed.

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)(3), 100.3(a)(4) and 100.3(c)(1) of the

Rules Governing Judicial Conduct and Canons 1, 2, 3A(3), 3A(4), and 3C(1) of the Code of Judicial Conduct. Charge I and Paragraph 17 of Charge V of the Formal Written Complaint are sustained insofar as they are consistent with the findings herein, and respondent's misconduct is established. Charges II, III and IV and Paragraph 16 of Charge V are dismissed. Respondent's cross motion is denied.

Respondent had a long-standing personal and professional relationship with Beverly Johnston. He properly disqualified himself from handling her first case and should have had no part in the second matter, as well. Although he is permitted to practice law, respondent could not represent her as an attorney in his own court (Section 16 of the Judiciary Law) and, in any event, Ms. Johnston had retained another attorney.

It was highly improper for respondent to order her release from custody and to take her driver's license from the court file and personally return it to her. Regardless of the validity of the ticket, the jurisdiction of Judge Sommer, the propriety of the bench warrant and the taking of Ms. Johnston's license, respondent should have refrained from any action. Section 100.3(c)(1) of the Rules Governing Judicial Conduct; Matter of Wright, unreported (Com. on Jud. Conduct, June 20, 1988); Matter of Feeney, 1988 Annual Report 159 (Com. on Jud. Conduct, Dec. 24, 1987). These issues should have been

litigated in the proper forum by the parties without respondent's intervention. We reject his contention that it was his proper role as the elected, senior or administrative judge of the court to correct errors in the case, especially in the manner in which he did so. His intervention constituted abuse of his judicial office to gain special treatment for a friend and sometime client. Such misconduct is malum in se. Matter of Byrne, 47 NY2d (b) (Ct. on the Judiciary 1979).

With respect to Charge V, we conclude that it was improper for respondent to preside over cases involving attorneys with whom he shares office facilities and with whom he was once associated in law practice and the ownership of a building.

Before respondent took the bench in 1984, it was established that the divisions of the Lockport City Court constituted a single court and that a judge could not practice in either division or permit his law partners to do so. Matter of Harris v. State Commission on Judicial Conduct, 56 NY2d 365 (1982). Under the circumstances of this case, the relationship of respondent and the attorneys with whom he shares offices is sufficiently close so as to require his disqualification from any matters in which they appear as counsel.

However, because respondent was ordered to hear their cases by Judge Hannigan on March 18, 1986, we find misconduct only with respect to the nine cases respondent handled before that date. Although the Commission is not bound by Judge Hannigan's interpretations of the facts and law, respondent was, and it cannot be concluded that it was misconduct for him to follow the directions of a higher court.

As to his presiding over the nine earlier cases, we note two mitigating factors: respondent had taken some steps to disassociate himself from the Bens; and the law was unsettled as to whether he could preside. Therefore, the sanction we impose is not based on his involvement in those nine cases.

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

Mrs. Robb, Judge Altman, Mr. Berger, Mr. Bower, Judge Ciparick, Mr. Cleary, Mr. Kovner and Judge Ostrowski concur.

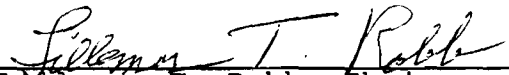
Mrs. Del Bello dissents as to sanction only and votes that respondent be removed from office.

Judge Rubin and Mr. Sheehy 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: November 17, 1988


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

Schedule A

<u>Case</u>	<u>Date of Judgment</u>	<u>Attorney</u>
<u>MacFarlane v. Bull</u>	5/09/84	Charles P. Ben
<u>Garlock v. Hopkins</u>	3/08/84	Anthony C. Ben
<u>Hess v. Torres</u>	4/23/84	Charles P. Ben
<u>Cooke v. Knowles</u>	3/23/84	Charles P. Ben
<u>Hammond v. McDonough</u>	4/30/84	Charles P. Ben
<u>MacFarlane v. Farrell</u>	5/24/84	Charles P. Ben
<u>MacFarlane v. Miller</u>	9/06/84	Charles P. Ben
<u>D&J Automotive v. McKernan</u>	6/26/84	Charles P. Ben
<u>D'Agostino v. Henning</u>	7/25/84	Charles P. Ben