

**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**

ROBERT J. WILKINS,

a Justice of the Olive Town  
Court, Ulster 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 (Henry S. Stewart, Of Counsel) for the  
Commission

Riseley, Riseley, Findholt & Gruner (By Paul L.  
Gruner) for Respondent

The respondent, Robert J. Wilkins, a justice of the  
Olive Town Court, Ulster County, was served with a Formal  
Written Complaint dated March 11, 1985, alleging that he denied  
an unrepresented plaintiff a jury trial, held an informal

proceeding and, after an ex parte conversation with the defendant's attorney, dismissed the claim. Respondent filed an answer dated April 1, 1985.

By order dated April 30, 1985, the Commission designated the Honorable Catherine T. England as referee to hear and report proposed findings of fact and conclusions of law. A hearing was held on July 2, 1985, and the referee filed her report with the Commission on October 21, 1985.

By motion dated November 13, 1985, the administrator of the Commission moved to confirm the referee's report and for a finding that respondent be censured. Respondent did not file any papers in response thereto and waived oral argument.

On December 12, 1985, the Commission considered the record of the proceeding and made the following findings of fact.

1. Respondent is a justice of the Olive Town Court and has been since January 1982.

2. On February 22, 1984, respondent signed a summons in Jeffrey N. Fisher v. Patriot Colonial Lincoln Mercury, a civil case.

3. On March 7, 1984, Mr. Fisher appeared before respondent without counsel. Attorney J. David Aikman and Thomas Murphy, president of Patriot Colonial Lincoln Mercury, appeared for the defendant.

4. Mr. Fisher requested a jury trial.

5. Respondent replied that he wanted to see whether the case warranted a trial and would conduct a "preliminary hearing."

6. Mr. Fisher objected to proceeding on the ground that he had an expert witness who was not present to testify.

7. Mr. Fisher told respondent that he intended to have his lawyer present to represent him at trial.

8. Respondent insisted upon proceeding in deference to Mr. Aikman, who had traveled some distance to be in court. Mr. Fisher and Mr. Murphy were sworn and questioned concerning the merits of the claim.

9. Respondent indicated that he had some doubts about the validity of the claim by Mr. Fisher.

10. After the court session, Mr. Fisher contacted his attorney, Jeffrey M. Brody.

11. Mr. Brody immediately called respondent. Mr. Brody objected to the court proceeding and demanded a jury trial for his client.

12. Respondent indicated that Mr. Fisher's claim had no merit and refused to grant him a jury trial.

13. Respondent then called Mr. Aikman, indicated that he felt that Mr. Fisher's claim had little merit and said that the court would entertain a motion to dismiss.

14. Neither Mr. Fisher nor Mr. Brody were parties to or notified of the conversation between respondent and Mr. Aikman.

15. On March 14, 1984, respondent wrote to Mr. Fisher and Mr. Aikman separately and told them that he would entertain pre-trial motions on April 13, 1984.

16. On March 20, 1984, Mr. Brody wrote to respondent, noted his appearance on behalf of Mr. Fisher and again demanded a jury trial.

17. On March 26, 1984, respondent replied to Mr. Brody, again noted the date for pre-trial motions and stated that he would determine the date for trial at a later time.

18. On March 21, 1984, Mr. Aikman moved for dismissal of the claim.

19. On April 6, 1984, Mr. Brody opposed the motion and cross-moved for respondent's disqualification.

20. On May 4, 1984, respondent granted the motion to dismiss.

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)(1) and 100.3(a)(4) of the Rules Governing Judicial Conduct and Canons 1, 2, 3A(1), 3A(4) of the Code of Judicial Conduct. The charge in the Formal Written Complaint is

sustained, and respondent's misconduct is established.

In the absence of counsel for a party whom respondent knew to be represented, he conducted a proceeding in a civil case which was neither a trial nor a pre-trial conference. In doing so, respondent violated the law and denied the plaintiff the right to a trial.

In conversations with both parties, respondent voiced a pre-disposition as to the merits of the claim, thus abandoning his role as an independent and impartial judge. He then suggested ex parte that the defendant's counsel move to dismiss the claim.

Such misconduct warrants public sanction. Matter of Curcio, 3 Commission Determinations 198 (Com. on Jud. Conduct, Mar. 1, 1983); Matter of Loper, unreported (Com. on Jud. Conduct, Jan. 25, 1984).

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

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

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 conclusion of law required by Section 44, subdivision 7, of the Judiciary Law.

Dated: December 24, 1985



---

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