

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

RAYMOND E. BURR,

a Justice of the Middlefield
Town Court, Otsego County.

Determination

THE COMMISSION:

Mrs. Gene Robb, Chairwoman
Honorable Fritz W. Alexander, II
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
Carroll L. Wainwright, Jr., Esq.*

APPEARANCES:

Gerald Stern (Albert B. Lawrence,
Of Counsel) for the Commission

Greene and Green (By Lynn E. Green, Jr.)
for Respondent

The respondent, Raymond E. Burr, a justice of the
Middlefield Town Court, Otsego County, was served with a Formal
Written Complaint dated May 6, 1982, alleging that over a 19-month
period he repeatedly refused a newspaper reporter access to public

* Mr. Wainwright's term as a member of the Commission expired on March 31, 1983.
The vote in this case was held on February 16, 1983. †

court records and proceedings. Respondent filed an answer dated May 28, 1982.

By order dated June 17, 1982, the Commission designated William H. Morris, Esq., as referee to hear and report proposed findings of fact and conclusions of law. The hearing was held on July 29, 1982, and the referee filed his report with the Commission on October 4, 1982.

By motion dated January 6, 1983, the administrator of the Commission moved to confirm in part and to disaffirm in part the referee's report, and for a determination that respondent be admonished. Respondent opposed the motion on January 21, 1983. Respondent waived oral argument.

The Commission considered the record of the proceeding on February 16, 1983, and made the following findings of fact.

1. Respondent serves as a part-time town justice. He customarily holds court on Monday evenings at 7:00 p.m. at the Middlefield firehouse.

2. Respondent keeps his court dockets in a foot locker at his home and brings them with him to court on Monday evenings. He customarily makes his dockets available for inspection on Monday evenings at the firehouse. Respondent does not release information over the telephone concerning court cases.

3. Claude Rose is a newspaper reporter for the Oneonta Star. Richard Johnson is editor and publisher of the Freeman's Journal in Cooperstown.

4. In October 1980, Mr. Rose requested information from respondent on several occasions, by telephone and in person, concerning People v. Mervin Nichols, over which respondent had presided. Respondent refused to provide Mr. Rose with information in the Nichols case, notwithstanding that the records of the case were not sealed or otherwise confidential. Mr. Rose thereafter invoked the Freedom of Information Law, gave respondent a copy of Section 2019-a of the Uniform Justice Court Act pertaining to court records, and asked to see respondent's records. Respondent denied the request. Several times thereafter in the autumn of 1980 Mr. Rose requested to see respondent's court records, and each time respondent denied the request.

5. On March 16, 1981, Mr. Rose attended a public court proceeding in respondent's court in the case of People v. Robert Race. Respondent attempted to remove Mr. Rose from the court, but he was prevailed upon by the prosecutor to allow Mr. Rose to remain. At the end of the proceeding, Mr. Rose asked to see the court dockets and was informed by respondent that the dockets were not there that evening. Respondent did not state when the records could be examined.

6. On March 16, 1981, and April 7, 1981, Mr. Rose and his newspaper's attorney, respectively, wrote to respondent and asked that Mr. Rose be allowed to see the court dockets. Respondent did not answer the letters.

7. On April 5, 1982, Mr. Rose and another journalist, Mr. Johnson, attended a regularly scheduled public session of respondent's court and requested to see the court dockets for 1981 and 1982, either then or by appointment within the next two days. Respondent denied the request and asked Mr. Rose and Mr. Johnson to leave the court.

8. On May 4, 1981, Mr. Rose attended a regularly scheduled public session of respondent's court. Respondent ordered Mr. Rose to leave and threatened to call the sheriff if Mr. Rose refused. Respondent thereupon telephoned the sheriff's department, and a deputy was sent to court. Mr. Rose left the court on his own accord after a discussion with the deputy.

9. In late summer of 1981, Mr. Rose telephoned respondent to inquire about a kidnapping case heard in respondent's court. Respondent made no comment and hung up the phone.

10. Respondent was aware of Section 2019-a of the Uniform Justice Court Act and was aware that his court records are public records which Mr. Rose and Mr. Johnson were entitled to see. Respondent was aware that the proceedings in his court are open to the public and that Mr. Rose and Mr. Johnson were entitled to be present.

11. Respondent refused to permit Mr. Rose to see his court records because he disliked Mr. Rose personally and because he wanted to keep his records and proceedings private. Respondent's

refusal to allow Mr. Rose to see the court records was not motivated by any good faith considerations.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 100.1, 100.2(a) and 100.3(b)(1) of the Rules Governing Judicial Conduct, Canons 1, 2A and 3B(1) of the Code of Judicial Conduct, Section 2019-a of the Uniform Justice Court Act and Section 4 of the Judiciary Law. The Charge in the Formal Written Complaint is sustained, and respondent's misconduct is established.

Records and proceedings of the court are public, with certain exceptions which do not apply in this instance, such as cases in which "youthful offender" status is granted to the defendant or when sealed by the court upon a disposition favorable to the defendant. Court records which are not confidential must be made available for public inspection. (See, Section 4 of the Judiciary Law and Section 2019-a of the Uniform Justice Court Act. See also, Werfel v. Fitzgerald, 23 AD2d 306 [2d Dept. 1965].) Court records are not the private property of the individual judge. They cannot be withheld from the public, except pursuant to law.

Respondent excluded a newspaper reporter from public court proceedings and refused for 19 months to allow access by that reporter to public documents. He did so because of personal animosity toward the reporter, and because of an inappropriate and legally unsupportable view that such proceedings and records

should be private. Respondent thereby failed to observe the applicable standards of conduct, with which he was familiar.

The Commission notes that the incidents involved in this proceeding appear to be isolated and not indicative of a pattern of denying access to court proceedings and records.

By reason of the foregoing, the Commission determines that respondent should be admonished.

Mrs. Robb, Judge Alexander, Mr. Bower, Mr. Bromberg, Mrs. DelBello, Judge Ostrowski, Judge Shea and Mr. Wainwright concur.

Mr. Cleary, Mr. Kovner and Judge Rubin 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: April 22, 1983


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