

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

JOSEPH S. CURCIO,

a Justice of the Malta Town
Court, Saratoga 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

David L. Reibel for Respondent

The respondent, Joseph S. Curcio, a justice of the Malta Town Court, Saratoga County, was served with a Formal Written Complaint dated November 5, 1981, alleging misconduct with respect to two cases involving the same defendant in January 1980 and March 1981. Respondent filed an answer dated January 20, 1982.

By order dated June 4, 1982, the Commission designated Edward Brodsky, Esq., as referee to hear and report proposed findings of fact and conclusions of law. The hearing was held on July 13, 1982, and the referee filed his report with the Commission on October 22, 1982.

By motion dated December 3, 1982, the administrator of the Commission moved to confirm the referee's report and for a determination that respondent be censured. Respondent opposed the motion on January 10, 1983. Oral argument was waived.

The Commission considered the record of the proceeding on January 18, 1983, and made the following findings of fact.

As to Charge I of the Formal Written Complaint:

1. On December 31, 1979, Barry L. King was arraigned before respondent on a criminal complaint charging that he issued two bad checks in payment of rent on his residence at Northway Eleven Apartments.

2. Mr. King appeared before respondent on January 17, 21 and 26, 1980. On January 17 he was represented by counsel. On January 21 and 26 he appeared without counsel. At the January 26 appearance, no prosecutor was present.

3. Respondent fixed bail on January 17, 1980, at \$1500. That amount was determined by calculating restitution for the two allegedly bad checks, plus a fine. Bail was posted by Mr. King's mother-in-law, Catherine McCallum, and by John O'Connor.

4. At the January 26, 1980, appearance, Mr. King appeared before respondent without counsel. No prosecutor was present. Respondent told Mr. King and Mrs. McCallum, who was reached by telephone, that if Mr. King did not arrange to use the bail money to make restitution for the two allegedly bad checks, he would order Mr. King incarcerated for 90 days. Respondent entered a judgment of conviction against Mr. King for disorderly conduct, although the defendant was not charged with or tried on such a charge. Indeed, Mr. King had not pled guilty to any charge in connection with this matter.

5. Mrs. McCallum arranged to have the bail money in Northway Eleven released, and it was used to make restitution and pay a \$250 fine set by respondent.

6. The judgment of conviction entered by respondent in the Northway Eleven matter, and respondent's entry in his court docket book, incorrectly state that the defendant was convicted after a trial, when in fact there was no trial.

As to Charge II of the Formal Written Complaint:

7. In March 1981, a civil complaint was filed against Mr. King by Robert Van Patten, the owner of Northway Eleven Apartments, for eviction and for back rent for October 1980 through February 1981.

8. On March 19, 1981, Mr. King appeared before respondent in the Van Patten matter and denied that he owed back rent. Mr. King presented proof of payment for at least part of the back rent. The plaintiff, Mr. Van Patten, presented no evidence to the effect that rent was owing. No trial was held.

9. Respondent entered a default judgment against Mr. King on March 19, 1981, in the full amount demanded in the plaintiff's petition, notwithstanding that Mr. King appeared, was not in default and denied the allegations in the complaint. Respondent failed to deduct from the awarded judgment the amount which he acknowledged Mr. King showed he had paid.

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(a)(1) and 100.3(a)(4) of the Rules Governing Judicial Conduct (formerly Sections 33.1, 33.2[a], 33.3[a][1] and 33.3[a][4]) and Canons 1, 2A, 3A(1) and 3A(4) 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 obliged by the Rules Governing Judicial Conduct to be faithful to and competent in the law, to insure that all those with a legal interest have a full right to be heard, and to act in a manner that promotes public confidence in the integrity

of the judiciary. By disposing of the Northway Eleven Apartments case without a trial, in the absence of a prosecutor and defense counsel, with a judgment that found the defendant guilty of a crime he had not been accused of committing, respondent did not meet the relevant provisions of the Rules cited above. Moreover, respondent abused the bail process by improperly threatening the defendant with incarceration if he failed to make restitution with bail money that was not his and which others had posted on his behalf.

By disposing of the Van Patten case without a trial, and by entering a default judgment against the defendant who was not in default and in fact was present before the judge, respondent again denied the defendant his fundamental right to be heard.

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

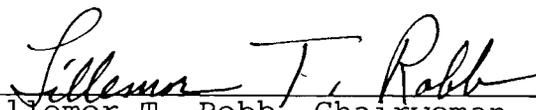
Mrs. Robb, Judge Alexander, Mr. Bromberg, Mrs. DelBello, Mr. Cleary, Mr. Kovner, Judge Ostrowski and Mr. Wainwright concur.

Mr. Bower, Judge Rubin and Judge Shea 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: March 1, 1983


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