

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

EDWARD A. RATH,

a Justice of the Supreme Court,
8th Judicial District, Erie 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, Of Counsel) for the
Commission

John P. Lane for Respondent

The respondent, Edward A. Rath, a justice of the
Supreme Court, 8th Judicial District, was served with a Formal
Written Complaint dated April 28, 1988, alleging political
activity and improper service on a government committee.
Respondent filed an answer dated June 2, 1988.

On November 16, 1988, 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 November 17, 1988.

The administrator and respondent submitted memoranda as to sanction. On January 20, 1989, 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. The charge is not sustained and is, therefore, dismissed.

As to Charge II of the Formal Written Complaint:

2. Respondent has been a justice of the Supreme Court since January 1985.

3. Respondent and Mary Lou Rath have been married since 1959. Ms. Rath has been an Erie County legislator since 1977.

4. On August 28, 1986, respondent and his wife attended a \$50-per-person fund-raiser in West Seneca in support of her campaign for Erie County clerk. A gross amount of more than \$6,000 was raised by the event. Neither respondent nor any member of his family purchased a ticket. Respondent was not introduced, nor did he participate in the program.

5. On October 9, 1986, respondent and his wife attended a \$150-per-person fund-raiser in Cheektowaga in support of her campaign for Erie County clerk. The event was attended by more than 100 people and raised a gross amount of approximately \$56,000. Neither respondent nor any member of his family purchased a ticket. Respondent was not introduced, nor did he participate in the program.

6. On April 6, 1987, respondent and his wife attended a fund-raiser in Cheektowaga in support of Jack Kemp's campaign for President of the United States. Tickets were \$150 per person or \$300 per couple. Ms. Rath purchased a ticket for respondent, who attended as her escort. Respondent was not introduced, nor did he participate in the program.

7. On April 12, 1987, respondent and his wife attended a fund-raiser in Aurora in support of Tom Reynolds' campaign for Erie County legislator. Members of the county legislature and their spouses were given complimentary tickets. Respondent attended as his wife's escort. The event was attended by more than 100 people and raised a gross amount of more than \$11,000.

Respondent was not introduced, nor did he participate in the program.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 100.1, 100.2 and 100.7(a) of the Rules Governing Judicial Conduct and Canons 1, 2 and 7A(1)(c) of the Code of Judicial Conduct. Charge II of the Formal Written Complaint is sustained, and respondent's misconduct is established. Charge I is dismissed.

"... Judges must hold themselves aloof from and refrain from engaging in political activity, except to the extent necessary to pursue their candidacies during their public election campaigns." Matter of Maney v. State Commission on Judicial Conduct, 70 NY2d 27, 30 (1987). Consequently, judges may not accompany their spouses to political events, nor may they participate in their spouses' political campaigns.

Respondent's attendance as his wife's escort at fund-raisers for candidates for President and for county legislator were in clear violation of the standards that prohibit such political activity by judges. Section 100.7 of the Rules Governing Judicial Conduct. He also attended two fund-raisers for his wife's campaign. While it is understandable that a husband would want to support his wife's independent aspirations, a judge must refrain from doing so where prohibited by ethical constraints.

In mitigation, we note that respondent has recognized his misconduct and has been candid and cooperative with the Commission in this proceeding. See Matter of Edwards v. State Commission on Judicial Conduct, 67 NY2d 153, 155 (1986); Matter of Kelso v. State Commission on Judicial Conduct, 61 NY2d 82, 87 (1984).

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

Mrs. Robb, Judge Altman, Mr. Berger, Mr. Bower, Mrs. Del Bello, Mr. Kovner, Judge Rubin and Mr. Sheehy concur, except that Mrs. Robb, Mr. Berger and Mrs. Del Bello dissent as to Charge I only and vote that the charge be sustained.

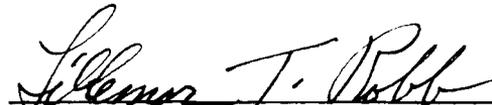
Judge Ciparick and Mr. Cleary dissent as to sanction only and vote that the appropriate disposition would be to issue a confidential letter of dismissal and caution.

Judge Ostrowski did not participate.

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: February 21, 1989


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