

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

ELAINE M. RIDER,

a Justice of the Sangerfield Town
Court and the Waterville Village
Court, Oneida County.

Determination

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 (Stephen F. Downs and Cathleen S. Cenci,
Of Counsel) for the Commission

Woodman and Getman (By William H. Getman) for
Respondent

The respondent, Elaine M. Rider, a justice of the
Sangerfield Town Court and Waterville Village Court, Oneida
County, was served with a Formal Written Complaint dated
December 4, 1985, alleging ex parte contacts with the prosecutor

in a criminal case. Respondent filed an answer dated January 15, 1986.

By order dated February 10, 1986, the Commission designated Samuel B. Vavonese, Esq., as referee to hear and report proposed findings of fact and conclusions of law. A hearing was held on May 12, 1986, and the referee filed his report with the Commission on September 11, 1986.

By motion dated November 10, 1986, the administrator of the Commission moved to confirm in part and disaffirm in part the referee's report, to adopt additional findings and conclusions and for a determination that respondent be removed from office. Respondent opposed the motion by cross motion on November 28, 1986.

On December 12, 1986, the Commission heard oral argument, at which respondent appeared by counsel, and thereafter considered the record of the proceeding and made the following findings of fact.

1. Respondent is a justice of the Waterville Village Court and has been since 1982. She is also a justice of the Sangerfield Town Court and has been since 1985.

2. Respondent is not an attorney. She has attended training courses for non-lawyer judges required by the Office of Court Administration and has attended magistrates' association seminars on the law.

3. On December 4, 1984, an omnibus motion was filed in the Waterville Village Court by Armond J. Festine, defense counsel in People v. Charles G. Frennier. The motion asked respondent to suppress certain oral statements made by the defendant to a police officer, to direct that a bill of particulars be provided the defendant and to suppress the results of a breathalyzer test administered to the defendant.

4. On December 18, 1984, an answering affidavit opposing the motion was filed by Michael E. Daley, an assistant district attorney in Oneida County.

5. Upon receiving the papers, respondent called Mr. Daley and asked him how she should proceed. Mr. Daley advised her to set a date for a hearing on the motion.

6. Respondent scheduled a hearing in February 1985. At Mr. Festine's request, the matter was adjourned to March 14, 1985.

7. The hearing was held before respondent on March 14, 1985. At one point, during legal arguments between counsel, respondent stated:

You know you are both putting me on a spot and you both know that I am sitting here for the very first time hearing a matter such as this and not really knowing exactly what the points of law are.

8. At the conclusion of the hearing, respondent reserved decision. After the transcript arrived, she examined

it and concluded that there was probable cause for the charge and that the case should proceed to trial.

9. Respondent again called Mr. Daley and asked him how she should proceed. Mr. Daley advised her to put her decision in writing.

10. Respondent asked Mr. Daley whether there was a particular form for her decision.

11. Mr. Daley asked for the substance of the decision. Respondent testified as to her response:

I told him I found, because of the testimony of the witnesses and the police officer and everyone involved, that I felt that it was a just ticket. I felt that the gentleman in question was, in fact, in reasonable cause for having a DWI ticket written and that I thought it should proceed from there. Either Mr. Festine could bring his client in to plead guilty or either we would go to trial.

12. Mr. Daley then volunteered to have prepared a written decision for respondent's signature. Respondent concurred, saying that she did not "really have the time to puzzle this out."

13. Mr. Daley prepared and sent to respondent a three-page decision, setting forth the facts of the incident, denying Mr. Festine's motion and concluding:

I find the defendant's testimony not to be credible while that of the Officer and of McNamara in regard to the time he left the Colonial Inn to be credible and believable.

The above language was not language used by respondent in the telephone conversation with Mr. Daley.

14. Respondent signed the decision and sent it with a handwritten cover memorandum to the parties. Respondent scheduled the matter for May 21, 1985. Mr. Festine was not informed as to how the decision had been prepared nor of respondent's conversation with Mr. Daley.

15. Mr. Festine requested an adjournment of the matter. On June 4, 1985, he informed respondent by letter that the defendant wished to proceed to trial and asked for a pretrial conference.

16. By letter of June 10, 1985, Mr. Festine requested that respondent disqualify herself and transfer the Frennier case to another court on the grounds that her decision as to his motion appeared to have been authored by the prosecutor.

17. Respondent scheduled the matter for June 18, 1985.

18. Mr. Festine failed to appear on June 18, 1985. He called respondent by telephone, informed her that he was unable to appear and asked for a reply to his request that she disqualify herself.

19. On July 17, 1985, Mr. Festine moved in the Oneida County Court for respondent's disqualification. Respondent was not sent a copy of the motion and accompanying affidavit.

20. In July 1985, respondent called the district attorney's office and asked a secretary to prepare an order

transferring the Frennier case to the Marshall Town Court. A document labeled "affidavit" was typed, and respondent signed it on July 25, 1985.

21. By order dated August 13, 1985, the case was transferred to the Clinton Village Court by John L. Murad, a judge of the Oneida County Court.

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) and 3A(4) of the Code of Judicial Conduct. The charge in the Formal Written Complaint is sustained insofar as it is consistent with the findings above, and respondent's misconduct is established. Respondent's cross motion is denied.

This matter illustrates a problem of the Justice Court system in this state. While we sympathize with respondent's need for assistance, we cannot condone the method by which she sought it. Despite her lack of training and experience, she should have known that it was improper to rely on the prosecutor and to discuss with him the merits of the case in the absence of defense counsel. Matter of Wilkins, 1986 Annual Report 173 (Com. on Jud. Conduct, Dec. 24, 1985); Matter of Martin B. Klein, 1985 Annual Report 167 (Com. on Jud. Conduct, Aug. 30,

1984). The critical consideration is that a fair trial be afforded to both parties and, thus, high ethical standards must be observed by lawyer and lay judges alike. Matter of Fabrizio v. State Commission on Judicial Conduct, 65 NY2d 275 (1985). Ignorance of the rules is not a defense. Matter of Paul McGee, 1984 Annual Report 124 (Com. on Jud. Conduct, Jan. 21, 1983), affd., 59 NY2d 870 (1983).

Respondent exacerbated her misconduct by continuing to have orders prepared by the prosecutor after Mr. Festine questioned the practice. Matter of Sims v. State Commission on Judicial Conduct, 61 NY2d 349 (1984).

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

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

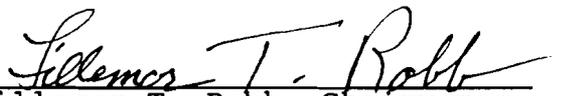
Mr. Bromberg dissents as to sanction only and votes that respondent be removed from office.

Judge Rubin was not present.

CERTIFICATION

It is certified that the foregoing is the determination of the State Commission Judicial Conduct, containing the findings of fact and conclusions of law required by Section 44, subdivision 7, of the Judiciary Law.

Dated: January 30, 1987


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