

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 W. DALLY,

a Justice of the Town and Village
Courts of Monroe, Orange County

Determination

BEFORE: Mrs. Gene Robb, Chairwoman
Honorable Fritz W. Alexander, II
David Bromberg, Esq.
Honorable Richard J. Cardamone
Dolores DelBello
Michael M. Kirsch, Esq.
Victor A. Kovner, Esq.
William V. Maggipinto, Esq.
Honorable Isaac Rubin (abstaining)
Honorable Felice K. Shea
Carroll L. Wainwright, Jr., Esq.

APPEARANCES:

Gerald Stern (Alan W. Friedberg, Of Counsel)
for the Commission

Robert T. Hartmann for Respondent

The respondent, Joseph W. Dally, a justice of the Town and Village Courts of Monroe, Orange County, was served with a Formal Written Complaint dated August 13, 1979, alleging (i) that between 1973 and 1978, respondent presided over 11 cases in which he was related to the defendants and (ii) that between 1975 and 1977 respondent failed to meet various record keeping and financial reporting requirements. Respondent filed an answer dated October 1, 1979.

By order dated November 19, 1979, the Commission designated the Honorable Joseph F. Hawkins as referee to hear and report proposed findings of fact and conclusions of law. The hearing was held on February 7 and March 18 and 19, 1980, and the report of the referee was filed on May 14, 1980.

By motion dated September 8, 1980, 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 October 3, 1980, and cross-moved for dismissal of a substantial portion of the Formal Written Complaint.

The Commission heard oral argument on the motions on October 30, 1980, at which respondent and his counsel were heard, thereafter considered the record of the proceeding and now makes the determination herein.

With respect to Charges I through XI of the Formal Written Complaint, the Commission makes the following findings of fact.

1. From February 18, 1974, to February 27, 1974, respondent presided over the case of People v. Douglas Dally, in which the defendant was charged with operating a vehicle with a broken windshield, notwithstanding that the defendant was his son. The defendant was fined \$10.

2. From March 28, 1973, to December 6, 1973, respondent presided over the case of People v. Arthur Daniel Dally, in which the defendant was charged with burglary in the third degree, notwithstanding that the defendant was the son of respondent's first cousin. The charge was reduced to petty larceny, and the defendant was sentenced to probation for three years as a youthful offender.

3. From March 30, 1973, to December 6, 1973, respondent presided over the case of People v. Arthur Daniel Dally, in which the defendant was charged with public intoxication, notwithstanding that the defendant was the son of respondent's first cousin. Respondent granted an unconditional discharge in the case.

4. From June 1, 1973, to December 6, 1973, respondent presided over the case of People v. Arthur Daniel Dally, in which the defendant was charged with harassment, notwithstanding that the defendant was the son of respondent's first cousin. Respondent granted an unconditional discharge in the case.

5. From October 22, 1977, to November 30, 1977, respondent presided over the case of People v. Arthur Daniel Dally, in which the defendant was charged with disorderly conduct, notwithstanding that the defendant was the son of respondent's first cousin. Respondent imposed a conditional discharge in the case.

6. On August 9, 1978, respondent presided over the case of People v. Arthur Daniel Dally, in which the defendant was charged with driving while intoxicated, notwithstanding that the defendant was the son of respondent's first cousin. Respondent imposed a conditional discharge in the case, requiring the defendant to attend a "drinking driver" program.

7. From August 6, 1974, to March 19, 1975, respondent presided over the case of People v. Lawrence A. Dally, in which the defendant was charged with operating a motor vehicle without insurance and driving a vehicle with an expired registration, notwithstanding that the defendant was the son of respondent's first cousin. The insurance charge was dismissed upon presentation of proof of insurance. The defendant was fined \$50 on the remaining charge.

8. From November 2, 1974, to March 19, 1975, respondent presided over the case of People v. Lawrence A. Dally, in which the defendant was charged with operating a motor vehicle without insurance, operating a vehicle with a broken windshield and operating an unregistered vehicle, notwithstanding that the defendant was the son of respondent's first cousin. The insurance charge was dismissed upon presentation of proof of insurance. The defendant was fined \$50 on each of the remaining two charges.

9. From December 19, 1975, to February 17, 1976, respondent presided over the case of People v. Lawrence A. Dally, in which the defendant was charged with operating a motor vehicle without insurance and with operating an unregistered vehicle, notwithstanding that the defendant was the son of respondent's first cousin. The insurance charge was dismissed upon presentation of proof of insurance. The defendant was fined \$10 on the remaining charge.

10. On October 12, 1973, respondent presided over the case of People v. William L. Dally, Jr., in which the defendant was charged with drinking in a park, notwithstanding that the defendant was the son of respondent's first cousin. The defendant was fined \$25.

11. From March 26, 1973, to May 2, 1973, respondent presided over the case of People v. David M. Dally, in which the defendant was charged with operating a truck with an overload, notwithstanding that the defendant was respondent's first cousin. The defendant was fined \$100.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated (i) Section 14 of the Judiciary Law as to each charge, (ii) Sections 33.1, 33.2, 33.3(a)(1) and 33.3(c)(1)(iv)(a) of the Rules Governing Judicial Conduct as to Charge I and Charges V through IX, and (iii) Sections 1, 2, 3A(1) and 3C(1)(d)(i) of the Code of Judicial Conduct as to Charge I. Charges I through XI of the Formal Written Complaint are sustained, and respondent's misconduct is established. The affirmative defenses interposed by respondent's answer are without merit and are dismissed.

With respect to Charges XII and XIII of the Formal Written Complaint, the Commission makes the following findings of fact.

12. From June 4, 1975, to December 31, 1977, respondent's court records were deficient as noted below, thus making impossible a full audit of the records by the Department of Audit and Control.

(a) The cash receipts record had not been properly maintained.

(b) A monthly listing of outstanding bail was not maintained.

(c) Monthly reconciliations of official bank accounts were not prepared and lists of outstanding checks were not prepared.

(d) The criminal dockets were incomplete in that the receipt and disbursement of bail was not recorded therein.

(e) Duplicate forfeitures of bail were made in some instances, and in other instances bail was refunded in amounts greater than that received, resulting in deficits in the bail account.

(f) Monthly reconciliations of respondent's assets and liabilities were not prepared.

(g) Disbursement of monies from specific cases was made from the town court account when the deposit had been to the village court account, and vice versa.

(h) Several outstanding bails dating back to April 1971 were unresolved.

13. From June 4, 1975, to December 31, 1977, respondent failed to deposit all monies received in his official capacity into his official bank accounts within 72 hours of receipt.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Section 30.7 of the Uniform Justice Court Rules, Sections 33.1, 33.2 and 33.3 (b)(1) of the Rules Governing Judicial Conduct and Canons 1, 2 and 3B(1) of the Code of Judicial Conduct. Charges XII and XIII of the Formal Written Complaint are sustained, and respondent's misconduct is established.

The applicable provisions of the Judiciary Law and the Rules Governing Judicial Conduct, cited above, prohibit a judge from presiding over any matter in which he is related by consanguinity or affinity to a party in the proceeding, within the sixth degree. By presiding over matters in which the defendants were his son, his first cousin and the sons of his first cousin, respondent violated those provisions.

Respondent's assertion that he was unaware of the applicable statute, rules and canons is not persuasive. Respondent's

misconduct was clearly improper, and he knew or should have known the impropriety of presiding over cases involving his relatives, even in the absence of a specific prohibition. Professed ignorance of so fundamental a rule of conduct is no excuse. Indeed, Section 33.3(c)(1) of the Rules generally requires a judge to "disqualify himself in a proceeding in which his impartiality might reasonably be questioned...."

Although in most of the cases herein respondent imposed fines or conditional discharges on the defendants consistent with usual court practice, the prohibitions of the relevant statute and rules apply irrespective of the eventual outcome of the matter. Respondent's misconduct in these cases is, however, in part mitigated by the apparent impartiality with which he dealt with his relatives.

With respect to his records keeping deficiencies and his failure to deposit court money in a timely fashion, respondent has failed to discharge diligently his administrative responsibilities. His records are so poorly maintained that a thorough review by the Department of Audit and Control is virtually impossible, thus contributing further to a lack of confidence in respondent's court.

Having considered the nature of respondent's misconduct and the factors in mitigation, the Commission determines that removal from office would be too severe in this case. Respondent should be given the opportunity to conform his conduct to the applicable standards.

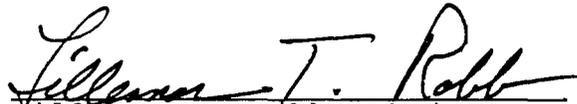
By reason of the foregoing, the Commission determines that the appropriate sanction is censure.

All concur.

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: January 28, 1981
Albany, New York


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