

**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

MELFORD C. HOPKINS,

a Justice of the Sodus Town and
Village Courts, Wayne County.

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 (John J. Postel, Of Counsel) for the
Commission

Michael J. Roulan for Respondent

The respondent, Melford C. Hopkins, a justice of the Sodus Town Court and Sodus Village Court, Wayne County, was served with a Formal Written Complaint dated April 12, 1985, alleging that he angrily revoked an order of recognizance, set

bail and jailed a defendant in a traffic case who had asked for an adjournment. Respondent filed an answer dated May 11, 1985.

By order dated May 17, 1985, the Commission designated John P. Cox, Esq., as referee to hear and report proposed findings of fact and conclusions of law. A hearing was held on July 15, 1985, and the referee filed his report with the Commission on October 7, 1985.

By motion dated November 7, 1985, the administrator of the Commission moved to confirm the referee's report and for a finding that respondent be censured. Respondent opposed the motion on November 27, 1985. Oral argument was waived.

On December 12, 1985, the Commission considered the record of the proceeding and made the following findings of fact.

1. Respondent is a justice of the Sodus Village Court and has been since 1964. Respondent is also a justice of the Sodus Town Court and has been since 1979.

2. On September 7, 1983, John A. Bruni appeared before respondent in the Sodus Town Court on a charge of Following Too Closely, a traffic infraction.

3. On advice of his counsel, who was not present, Mr. Bruni asked respondent for an adjournment. The matter had already been adjourned once to give Mr. Bruni an opportunity to obtain counsel and once because respondent was ill.

4. Respondent became annoyed with Mr. Bruni and set bail at \$250 cash or \$500 bond, notwithstanding that while released on his own recognizance, Mr. Bruni had appeared in court three times.

5. Before setting bail, respondent made no inquiry into the factors to determine whether Mr. Bruni was likely to return to court, as set forth in Section 510.30(2) of the Criminal Procedure Law, and acted without good cause, in violation of Section 530.60 of the Criminal Procedure Law.

6. Respondent told Mr. Bruni he had until midnight to raise the bail money. Respondent permitted Mr. Bruni the use of a telephone, then remanded him to the jury box.

7. A short time later, respondent told Mr. Bruni that he was "sick and tired of looking at [his] face." Respondent remanded Mr. Bruni to the custody of the sheriff, and he was taken to jail.

8. Mr. Bruni was polite and cooperative at all times during his appearance.

9. Respondent knew that Mr. Bruni was represented by Christopher D'Amanda but made no effort to contact him before committing his client to jail.

10. No representative of the district attorney's office was present or heard on the subject of bail before Mr. Bruni was committed.

11. Mr. Bruni spent about an hour at the jail before bail was posted.

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)(3) of the Rules Governing Judicial Conduct and Canons 1, 2A and 3A(3) of the Code of Judicial Conduct. The charge in the Formal Written Complaint is sustained, and respondent's misconduct is established.

The credible evidence establishes that respondent became annoyed with a defendant and, without cause and in contravention of statutory requirements, set bail on a traffic violation as a punitive measure.

Punitive use of bail is improper. Matter of Sardino v. State Commission on Judicial Conduct, 58 NY2d 286, 289 (1983). The capricious abuse of any legal process by a judge because of personal irritation is wrong. Matter of Perry, 53 AD2d 882 (2d Dept. 1976); Matter of Howard Miller, 2 Commission Determinations 71 (Com. on Jud. Conduct, Feb. 11, 1980); Matter of Sharpe, 3 Commission Determinations 233 (Com. on Jud. Conduct, June 7, 1983).

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

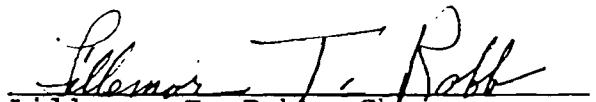
Mrs. Robb, Mr. Bower, Mr. Bromberg, Judge Ciparick,
Mr. Cleary, Mrs. DelBello, Mr. Kovner, Judge Ostrowski, Judge
Shea and Mr. Sheehy concur.

Judge Rubin was not present.

CERTIFICATION

It is certified that the foregoing is the determina-
tion 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 24, 1986



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