

**State of New York**  
**Commission on Judicial Conduct**

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In the Matter of the Proceeding Pursuant to Section 44,  
subdivision 4, of the Judiciary Law in Relation to

DONALD H. LOPER,

a Justice of the Village Court of  
Canisteo, Steuben County.

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**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  
John J. Sheehy, Esq.

APPEARANCES:

Gerald Stern (Cody B. Bartlett, Of Counsel)  
for the Commission

Shults and Shults (By William A. Argentieri)  
for Respondent

The respondent, Donald H. Loper, a justice of the  
Canisteo Village Court, Steuben County, was served with a  
Formal Written Complaint dated March 2, 1983, alleging that he  
refused to allow a litigant to file a civil claim in his court

on the basis of an ex parte communication with the prospective defendant. Respondent filed an answer on March 21, 1983.

By order dated April 18, 1983, the Commission designated W. David Curtiss, Esq., as referee to hear and report proposed findings of fact and conclusions of law. The hearing was held on June 28, 1983, and the referee filed his report with the Commission on October 18, 1983.

By motion dated November 10, 1983, the administrator of the Commission moved to confirm the referee's report and for a determination that respondent be censured.\* Respondent opposed the motion by cross-motion on November 28, 1983. The Commission heard oral argument on the motions on December 15, 1983, 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 Canisteo Village Court and has been since 1981. He is also a justice of the Hartsville Town Court and has been since 1977.

2. Respondent, a non-lawyer, has attended training sessions for non-lawyer judges sponsored by the Office of Court Administration.

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\* The administrator also requested that the Commission overrule the referee and admit into evidence Commission Exhibit 2 as marked for identification at the hearing. That request is hereby denied.

3. In January 1982, respondent was called by June Eid, who said that she wanted to file a claim against a hardware store owner, Kenneth Spencer, for damages caused during the removal of her dishwasher for repairs.

4. Respondent told Ms. Eid to come to court the following evening and to bring estimates of the damage.

5. Respondent then went to the home of Mr. Spencer. Respondent engaged in an ex parte conversation with Mr. Spencer concerning the merits of Ms. Eid's claim. Mr. Spencer denied responsibility for the damage and assured respondent that an employee with 35 years experience in appliance repair work would not have been negligent.

6. Ms. Eid appeared in respondent's court the following evening with the requested estimates.

7. Respondent told Ms. Eid that he had spoken with Mr. Spencer and had determined that he was not liable for the damage. He foreclosed Ms. Eid from filing her claim and stated that he would not accept it at a later time.

8. In testimony rejected by the referee and the Commission, respondent:

a) On October 19, 1982, denied that he had ever spoken with Mr. Spencer concerning Ms. Eid's claim;

b) on June 28, 1983, testified that he called

Mr. Spencer on the telephone after Ms. Eid had appeared in court and had asked him only whether he had done business with Ms. Eid; and,

c) on June 28, 1983, testified that he had refused to hear Ms. Eid's complaint on the date of her court appearance because she was under the influence of alcohol and that he told her to return at another time.

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, and respondent's misconduct is established. Respondent's cross-motion is denied.

Respondent denied Ms. Eid access to the court to address her legal grievance. He prejudged the matter based solely on an improper ex parte communication and refused to hear Ms. Eid's position. These actions were contrary to respondent's duty to hear impartially both sides of a dispute and to render a fair and unbiased decision. Such misconduct warrants public sanction. See, Matter of Howard Miller, unreported (Com. on Jud. Conduct, Feb. 11, 1980); Matter of Racicot, unreported (Com. on Jud. Conduct, Feb. 6, 1981).

Here, respondent exacerbated his misconduct by failing to be candid with the Commission after a complaint was made. He first testified that he had never spoken with Mr. Spencer about the matter. Later, he acknowledged that there was a conversation over the telephone after Ms. Eid appeared in court and that he asked Mr. Spencer only whether he had done business with Ms. Eid. The preponderance of the credible evidence is that respondent visited Mr. Spencer's home before Ms. Eid's court appearance and discussed the merits of her complaint.

Respondent's belated contention that he did not entertain Ms. Eid's complaint because she was under the influence of alcohol "lack[s] the ring of truth." Matter of Steinberg v. State Commission on Judicial Conduct, 51 NY2d 74, 81 (1980).

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

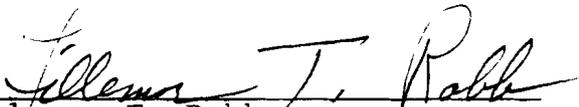
Mrs. Robb, Mr. Bower, Mr. Bromberg, Mr. Cleary, Mrs. DelBello, Mr. Kovner, Judge Ostrowski, Judge Shea and Mr. Sheehy concur.

Judge Alexander and Judge Rubin 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: January 25, 1984

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