

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

MARY RITA MERKEL,

a Justice of the East Bloomfield
Town Court, Ontario County.

THE COMMISSSION:

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 (Henry S. Stewart, Of Counsel) for the
Commission

Connors, Corcoran, Hall and Meyering (By Charles A.
Hall) for Respondent

The respondent, Mary Rita Merkel, a justice of the
East Bloomfield Town Court, Ontario County, was served with a
Formal Written Complaint dated April 2, 1987, alleging that she
improperly presided over a case in which her court clerk was the

complaining witness. Respondent filed an answer dated April 13, 1987.

By order dated April 28, 1987, the Commission designated Edward C. Cosgrove, Esq., as referee to hear and report proposed findings of fact and conclusions of law. A hearing was held on June 30, 1987, and the referee filed his report with the Commission on December 30, 1987.

By motion dated February 18, 1988, the administrator of the Commission moved to confirm in part and disaffirm in part the referee's report, to adopt additional conclusions of law and for a finding that respondent be admonished. Respondent opposed the motion by cross motion on March 11, 1988. The administrator filed a reply on April 4, 1988.

On April 14, 1988, 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 East Bloomfield Town Court and was during the time herein noted.

2. Shirley A. Coons has been respondent's court clerk since 1981. Initially, Ms. Coons served as clerk for both judges of the court, but since 1984, Ms. Coons has worked exclusively with respondent. Respondent and Ms. Coons are also neighbors.

3. On April 25, 1986, Ms. Coons signed a criminal information, accusing Barbara J. Young of Issuing a Bad Check.

4. On April 26, 1986, Trooper Joan Sprung, who had taken the information from Ms. Coons, went to respondent's home and asked her to sign a warrant for Ms. Young's arrest.

5. Respondent read the information and was aware that her court clerk was the complaining witness.

6. Respondent did not advise Trooper Sprung that the complaining witness was her court clerk.

7. Respondent understood at the time that she had discretion to refuse to issue the warrant.

8. Respondent signed the warrant.

9. Ms. Young was arrested by Trooper Sprung and brought before respondent for arraignment.

10. Respondent accepted a plea of not guilty, adjourned the matter to May 8, 1986, and released Ms. Young on \$250 bail.

11. Respondent did not disclose to Ms. Young or to Trooper Sprung at arraignment that the complaining witness was the court clerk.

12. Ms. Young's reappearance was subsequently adjourned to May 15, 1986.

13. After the arraignment but prior to the disposition, Ms. Young was told that Ms. Coons was respondent's court clerk.

14. Before the May 15, 1986, court appearance, Ms. Young's attorney, John LaDuca, and the assistant district attorney, William Kocher, discussed disposition of the matter. Mr. LaDuca and Mr. Kocher discussed the fact that the complaining witness was respondent's court clerk.

15. On May 15, 1986, by telephone before the court appearance, Mr. Kocher advised respondent that he would accept an adjournment in contemplation of dismissal as disposition of the charge against Ms. Young with restitution to Ms. Coons. Mr. Kocher did not ask respondent to disqualify herself from the case.

16. In court on May 15, 1986, Ms. Young and Mr. LaDuca appeared. Respondent granted an adjournment in contemplation of dismissal for six months and ordered Ms. Young to pay \$267 to the court as restitution for Ms. Coons.

17. Mr. LaDuca did not ask respondent to disqualify herself.

18. Respondent did not disclose to Ms. Young or Mr. LaDuca that Ms. Coons was her court clerk, and she did not know whether or not the parties knew that Ms. Coons was the court clerk.

19. Ms. Coons was not present at any of the proceedings before respondent in the matter and had no conversation with respondent concerning it.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 100.1 and 100.2 of the Rules Governing Judicial Conduct and Canons 1 and 2 of the Code of Judicial Conduct. Paragraphs 4(a), 4(b) and 4(c) of Charge I of the Formal Written Complaint are sustained, and respondent's misconduct is established. Paragraph 4(d) of the charge is dismissed.

It was improper for respondent to sign a warrant, to arraign the defendant and to dispose of her case without disclosing to the parties that the complaining witness was respondent's court clerk.

The judge and the clerk in a justice court have a close working relationship. A reasonable person might question whether the judge could handle fairly a matter involving someone with whom she has such frequent contact and a presumed relationship of trust. Judicial discretion was required in making determinations regarding the warrant, bail and disposition, and it was imperative that they be made in a manner that appears impartial.

Respondent acknowledges that when she signed the warrant, she had read the criminal information and was aware that the accusation was based on the complaint of her court

clerk. While arguing that signing the warrant was an "administrative act," respondent also acknowledges in her sworn testimony that she understood at the time that she had the discretion not to issue a warrant when presented with one by the police. Section 120.20 of the Criminal Procedure Law clearly makes the issuance of a warrant discretionary.

Judges have been sanctioned in the past for signing warrants in circumstances in which their impartiality might be subject to question, either because of their personal knowledge of the facts or their relationship with the complaining witness. See Matter of Sims v. State Commission on Judicial Conduct, 61 NY2d 349 (1984); Matter of Mullen, 1987 Annual Report 129 (Com. on Jud. Conduct, May 22, 1986); Matter of Tobey, 1986 Annual Report 163 (Com. on Jud. Conduct, Sept. 19, 1985); Matter of Del Pozzo, 1986 Annual Report 77 (Com. on Jud. Conduct, Jan. 25, 1985).

In this case, respondent had alternatives to simply signing the warrant. She could have refused to sign the warrant and had the matter brought before another judge. Even if the other judge of the court, for whom the clerk had previously worked, was unavailable or disqualified, the warrant could have been executed by a judge of an adjoining town. CPL Section 120.30(2). Additionally, respondent could have required service of a summons in lieu of the warrant. Section 120.20(3).

Respondent exacerbated this misconduct by failing to disclose the relationship at arraignment or at the dispositional hearing.

She could easily have dispelled any appearance of impropriety by disclosing the relationship. We do not find that her disqualification was mandated by Section 100.3(c) of the Rules Governing Judicial Conduct, but she should have at least disclosed the relationship and given the parties the opportunity to be heard on the issue before proceeding. By failing to do so, she did not act in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

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

Mrs. Robb, Judge Altman, Mr. Berger, Judge Ciparick, Mrs. DelBello, Mr. Kovner and Judge Ostrowski concur, except that Judge Altman dissents as to paragraph 4(a) of Charge I and votes to dismiss that aspect of the charge.

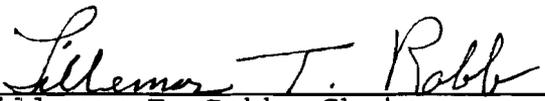
Mr. Cleary dissents as to sanction only and votes that the appropriate disposition would be to issue a confidential letter of dismissal and caution.

Mr. Bower, Judge Rubin and Mr. Sheehy 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: May 19, 1988



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