

**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

**Determination**

LERROY A. VONDERHEIDE,

a Justice of the Northampton Town  
Court, Fulton County.

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THE COMMISSION:

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 (Cathleen S. Cenci, Of Counsel) for the  
Commission

Caputo, Aulisi and Skoda (By Richard T. Aulisi; Robert  
M. Cohen, Of Counsel) for Respondent

The respondent, Leroy A. VonderHeide, a justice of the  
Northampton Town Court, Fulton County, was served with a Formal  
Written Complaint dated July 8, 1987, alleging ex parte  
communications, intemperate behavior, failure to disqualify in a  
case in which he had personal knowledge of the facts and abuse

of his judicial authority. Respondent filed an answer dated July 27, 1987.

By order dated August 4, 1987, the Commission designated Bernard H. Goldstein, Esq., as referee to hear and report proposed findings of fact and conclusions of law. A hearing was held on October 7 and 8, 1987, and the referee filed his report with the Commission on January 5, 1988.

By motion dated April 13, 1988, the administrator of the Commission moved to confirm the referee's report and for a finding that respondent be removed from office. Respondent opposed the motion by cross motion on May 6, 1988. The administrator filed a reply on May 10, 1988.

On May 13, 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.

Preliminary findings:

1. Respondent is a justice of the Northampton Town Court and has been since 1985.

2. Respondent is not a lawyer. He is a retired carpenter and a former part-time policeman in the Village of Northville and constable in the Town of Northampton.

As to Charge I of the Formal Written Complaint:

3. Between March 6, 1986, and March 28, 1986, in connection with People v. Lewis Buseck, a matter pending before respondent in which the defendant was charged with Petit Larceny, respondent contacted the defendant's father on two occasions and discussed ex parte factual matters pertaining to the case. Respondent also discussed ex parte the facts of the case with the complaining witness and the arresting officer while the case was pending. Based on his ex parte communications, respondent concluded that the charge could not be proved and, with the concurrence of the district attorney, dismissed it on March 28, 1986.

4. Between July 14, 1986, and July 23, 1986, in connection with People v. Lewis H. Buseck, a matter pending before respondent in which the defendant was charged with Criminal Trespass, Second Degree, and Resisting Arrest, respondent spoke ex parte with the defendant's father, who was the complaining witness with respect to the Criminal Trespass charge, concerning the facts of the case. Respondent also spoke ex parte with the arresting officer concerning the merits of the Resisting Arrest charge.

5. On June 18, 1985, in connection with People v. Carol L. Eno, a case pending before respondent in which the defendant was charged with Assault, Third Degree, respondent spoke ex parte with the defendant's mother. Based solely on his

conversation with the defendant's mother, respondent arraigned Harvey J. Van Nostrand, Jr., on a charge of Disorderly Conduct, notwithstanding that no accusatory instrument had been filed against him.

6. On February 25, 1987, respondent testified before a member of the Commission in connection with a duly-authorized investigation in this matter. Respondent testified that he often made telephone calls outside of court to determine the facts of matters pending before him. "I talked to all of them. I talked to the arresting officer. I may call your mother, father. I may call your neighbor to find out precisely what happened in many cases," respondent acknowledged. "Now, there's no way in the world that I can find out unless I ask some questions. Nobody is going to come forward and volunteer."

As to Charge II of the Formal Written Complaint:

7. In August 1986, respondent was entering a bar and restaurant where his wife worked as a waitress when he met Frank P. Mills, II, leaving the restaurant with a glass in his hand.

8. Respondent followed Mr. Mills, who was then 16 years old and lived above the bar and restaurant, to a parking lot.

9. Respondent confronted Mr. Mills and loudly and angrily accused him of carrying a glass of alcohol into the street.

10. Respondent referred to Mr. Mills as a "little bastard" and threatened that if he came before respondent in court his "ass will be grass."

11. The confrontation attracted the attention of a passing police officer. Respondent told the officer that he wanted Mr. Mills arrested. The officer refused. He warned respondent that if he continued to speak loudly the officer would arrest him. Respondent apologized to the officer and left the scene.

12. The police officer and Mr. Mills testified in this proceeding that respondent's eyes were red and that they believed that he had been drinking prior to the incident.

As to Charge III of the Formal Written Complaint:

13. On June 18, 1985, Carol L. Eno was arrested on a charge of Assault, Third Degree, in the Village of Northville on the complaint of Harvey J. Van Nostrand, Jr., that she had struck him with a crutch.

14. Ms. Eno was brought before respondent for arraignment. Mr. Van Nostrand, the arresting officers and Ms. Eno's parents were also present in the courtroom.

15. Before the arraignment, Ms. Eno's mother spoke ex parte with respondent and told him that the incident

was precipitated by lewd and obscene gestures that Mr. Van Nostrand had made to Ms. Eno and a friend, Donna K. Prevost.

16. Respondent then told one of the arresting officers, Francesco Malagisi, Jr., that Mr. Van Nostrand should be arrested. Officer Malagisi did not arrest Mr. Van Nostrand and lodged no accusatory instrument against him.

17. Respondent arraigned Ms. Eno and told Mr. Van Nostrand that he was being charged with Disorderly Conduct. Respondent indicated that he would give Mr. Van Nostrand a conditional discharge if he agreed to plead guilty, and Mr. Van Nostrand pled guilty because he "didn't know what to say."

18. Respondent indicated in his court records that Mr. Van Nostrand had been arraigned on a charge of Public Lewdness based on an accusatory instrument sworn to by Officer Malagisi and that Mr. Van Nostrand had pled guilty to a reduced charge of Disorderly Conduct.

As to Charge IV of the Formal Written Complaint:

19. On September 13, 1986, respondent drove Dennis Poulin to the scene of a confrontation between a deputy sheriff and Shaun Emrick and Earl H. Case. Mr. Poulin got out of respondent's car and assisted the deputy in taking Mr. Emrick and Mr. Case into custody.

20. Respondent parked and left his car and remained at the scene for approximately 15 minutes.

21. Respondent spoke with other spectators and watched a struggle between police officers and the men. After Mr. Emrick and Mr. Case had been arrested, respondent told the officers, "Bring them over to the office, and we'll arraign them now."

22. Later that evening, Mr. Emrick appeared before respondent on charges of Criminal Mischief and Resisting Arrest, and Mr. Case appeared on charges of Disorderly Conduct and Resisting Arrest. Respondent set bail and remanded the defendants to jail.

23. On September 16, 1986, respondent disposed of the cases.

As to Charge V of the Formal Written Complaint:

24. On April 28, 1986, respondent issued a warrant for the arrest of Leonard L. Watson on charges of Harassment and Criminal Mischief, Fourth Degree.

25. Mr. Watson, then 17 years old, was arraigned before respondent the same day and was remanded in lieu of \$500 bail.

26. On May 1, 1986, Mr. Watson reappeared in court. His attorney, Polly Hoyer, set forth the terms of an agreement with the district attorney whereby Mr. Watson would plead guilty to the charges in exchange for a conditional discharge and a jail sentence of time served.

27. Respondent was acquainted with Mr. Watson's father, Gordon. Respondent had had coffee "many mornings" with the elder Mr. Watson during which he complained to respondent that Vincent Cristiano was providing alcohol to his son.

28. At the younger Mr. Watson's court appearance on May 1, 1986, respondent indicated that he wanted the defendant to sign a statement that he had obtained alcohol from Mr. Cristiano. Respondent indicated that if Mr. Watson signed such a statement, respondent would grant a conditional discharge but that if he did not, respondent would impose a jail sentence.

29. Mr. Watson agreed to sign such a statement. Respondent summoned a deputy sheriff, Geoffrey S. Page, and advised him to obtain a statement from Mr. Watson, indicating from whom he had obtained alcohol.

30. Respondent disposed of the charges against Mr. Watson.

31. Deputy Page and Mr. Watson went into a room adjoining the courtroom where Mr. Watson dictated and signed a statement that he had drunk beer at Mr. Cristiano's apartment.

32. Deputy Page turned the statement over to respondent. Respondent told the deputy that he wanted to "throw the book" at Mr. Cristiano and "stick it up his ass." Respondent asked Deputy Page to arrest Mr. Cristiano, but the deputy refused to do so and turned the matter over to the district attorney's office.

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), 100.3(a)(4) and 100.3(c)(1)(i) of the Rules Governing Judicial Conduct and Canons 1, 2, 3A(1), 3A(4) and 3C(1)(a) of the Code of Judicial Conduct. Charges I through V of the Formal Written Complaint are sustained insofar as they are consistent with the findings herein, and respondent's misconduct is established. Respondent's cross motion is denied.

Respondent has engaged in a course of misconduct which demonstrates that he misperceives his proper role as a judge.

Admittedly unaware that he was obligated to rule only on evidence produced in court in the presence of both parties, respondent routinely interviewed his own witnesses in private and made judgments based on their unsworn, ex parte conversations. See Section 100.3(a)(4) of the Rules Governing Judicial Conduct; Matter of Orloff, 1988 Annual Report 199 (Com. on Jud. Conduct, May 28, 1987); Matter of Racicot, 1982 Annual Report 99 (Com. on Jud. Conduct, Feb. 6, 1981).

Again abandoning the proper role of a neutral and detached magistrate, respondent failed to disqualify himself in the Emrick and Case matters, notwithstanding that he had witnessed the very arrests that formed the basis for the Disorderly Conduct and Resisting Arrest charges against the

defendants. See Section 100.3(c)(1)(i) of the Rules Governing Judicial Conduct; Matter of Straite, 1988 Annual Report 226, 233 (Com. on Jud. Conduct, Apr. 16, 1987); Matter of Edwards, 1987 Annual Report 85 (Com. on Jud. Conduct, Nov. 21, 1986); Matter of Tobey, 1986 Annual Report 163 (Com. on Jud. Conduct, Sept. 19, 1985).

Respondent took the role of policeman or prosecutor in the Eno and Watson cases by insisting that additional arrests be made and, when rebuffed by the arresting officer in the Eno case, by conducting an arraignment and coercing a guilty plea from someone never charged. This constituted a serious abuse of his judicial authority. Matter of Jutkofsky, 1986 Annual Report 111 (Com. on Jud. Conduct, Dec. 24, 1985).

In addition, by his displays of anger and profanity in connection with the Mills incident and the Watson case, respondent departed from the high standards of conduct expected of judges on and off the bench. Matter of Cerbone v. State Commission on Judicial Conduct, 61 NY2d 93 (1984); Matter of Aldrich v. State Commission on Judicial Conduct, 58 NY2d 279 (1983); Matter of Kuehnel v. State Commission on Judicial Conduct, 49 NY2d 465 (1980).

By this series of improper acts, respondent has shown that he poses a threat to the proper administration of justice and is not fit to be a judge. Matter of Reeves v. State Commission on Judicial Conduct, 63 NY2d 105 (1984); Matter of

Sardino v. State Commission on Judicial Conduct, 58 NY2d 286  
(1983).

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

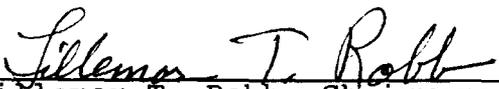
Mrs. Robb, Judge Altman, Mr. Bower, Mrs. Del Bello, Mr. Kovner, Judge Ostrowski and Judge Rubin concur.

Mr. Berger, Judge Ciparick, Mr. Cleary and Mr. Sheehy dissent as to sanction only and vote that respondent be censured.

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: June 22, 1988

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