

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

JOSEPH M. WHITE,

a Justice of the Greenburgh
Town Court, Westchester 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 (Alan W. Friedberg, Of Counsel) for the
Commission

Morosco and Cunard (By B. Anthony Morosco) for
Respondent

The respondent, Joseph M. White, a justice of the Greenburgh
Town Court, Westchester County, was served with a Formal Written
Complaint dated October 29, 1985, alleging, inter alia, that he
directed a court clerk to select a particular juror and that he made

false statements concerning the incident to several authorities. Respondent filed an answer dated December 5, 1985.

On January 31, 1986, respondent moved to dismiss the Formal Written Complaint. The administrator of the Commission opposed the motion on February 6, 1986. Respondent's counsel filed a reply affirmation on February 12, 1986. By determination and order dated February 14, 1986, the Commission denied the motion to dismiss.

By motion dated May 16, 1986, the administrator moved for summary determination as to Charges I through IV of the Formal Written Complaint and for a finding that respondent's misconduct be found established. Respondent's counsel submitted in reply a letter dated June 9, 1986. By determination and order dated June 19, 1986, the Commission granted the motion for summary determination with respect to Charges I through IV of the Formal Written Complaint and found respondent's misconduct established.

The administrator and respondent submitted memoranda as to sanction. On July 16, 1986, 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.

As to Charge I of the Formal Written Complaint:

1. Respondent, an attorney, is a justice of the Greenburgh Town Court and has been since January 1, 1976.

2. On November 29, 1983, respondent presided over jury selection in People v. Wayne Beresford, in which the defendant was charged with assault, third degree.

3. After several jurors had been selected, respondent ordered his assistant court clerk, Betty DeSilva, to call the name of Dorothy Sergeant from the panel of prospective jurors and to direct her to the jury box.

4. Ms. DeSilva then sifted through the names of prospective jurors in a box used for the random selection of jurors until she found the name of Ms. Sergeant and pulled it.

5. Ms. Sergeant was seated in the jury box, was found acceptable by both sides and was sworn as a juror in the case.

6. The prosecutor, Nicholas Maselli, questioned respondent concerning his direction that a particular juror be called.

7. Respondent denied that he had done so.

As to Charge II of the Formal Written Complaint:

8. By letter of March 22, 1984, in connection with a duly-authorized investigation, the administrator of the Commission asked respondent to reply to allegations that he had directed a court clerk to select the name of a particular juror.

9. By letters of April 16, 1984, and April 30, 1984, to the administrator, respondent denied that he had done so.

10. In the letter of April 30, 1984, respondent falsely stated that he had drawn Ms. Sergeant's name from the box of prospective jurors, that Ms. DeSilva thereafter drew two names for the same seat and that respondent then directed her to call the name that he had drawn.

11. In testimony before a member of the Commission on August 2, 1984, respondent acknowledged that he was not candid in his letter of April 30, 1984. Respondent testified that the version in the letter of how the juror had been selected "came from my own head."

12. Also in his letter of April 30, 1984, respondent falsely denied that he had ever directed court personnel on other occasions to draw the names of particular jurors.

13. In his testimony on August 2, 1984, respondent acknowledged that he had directed court personnel on other occasions to pick the names of particular jurors.

As to Charge III of the Formal Written Complaint:

14. Between November 29, 1983, and January 15, 1984, respondent received a telephone call from the administrative judge of the Ninth Judicial District, Joseph F. Gagliardi. Judge Gagliardi questioned respondent concerning the selection of jurors in the Beresford case.

15. Respondent falsely told Judge Gagliardi that Ms. DeSilva had selected more than one name from the box of prospective jurors and that he had instructed her only to call the first name.

16. In his testimony before a member of the Commission on August 2, 1984, respondent acknowledged that he had not been candid with Judge Gagliardi.

As to Charge IV of the Formal Written Complaint:

17. Between November 29, 1983, and January 15, 1984, respondent spoke to Ms. DeSilva and asked her to give her recollection of the selection of Ms. Sergeant in the Beresford case.

18. Ms. DeSilva told respondent that he had directed her to pull Ms. Sergeant's name.

19. Respondent falsely stated to Ms. DeSilva that his recollection was different than hers.

20. Ms. DeSilva asked respondent whether he was directing her to change her version of the facts. He replied that he was not doing so.

Charges V and VI of the Formal Written Complaint are not before us at this time.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 100.1, 100.2(a), 100.3(a)(1) and 100.3(b)(2) of the Rules Governing Judicial Conduct and Canons 1, 2A, 3A(1) and 3B(2) of the Code of Judicial Conduct. Charges I through IV of the Formal Written Complaint are sustained, and respondent's misconduct is established.

Section 500 of the Judiciary Law declares it the policy of the state that juries be selected "at random from a fair cross-section of the community...." Respondent subverted this policy and abridged

the rights of the defendant when he interfered with the jury selection process and directed a court clerk to choose a particular juror.

Respondent seriously exacerbated his misconduct by attempting over the next eight months to conceal his initial wrong-doing. He made false denials in conversations with the prosecutor and respondent's administrative judge and gave false versions of the events in letters to this Commission. Respondent also had a conversation with the court clerk that can only be interpreted as an attempt to coerce her into changing her version of the facts.

Respondent's actions were obviously designed to obstruct the court officers and this Commission from performing their lawful functions. Such deception is antithetical to the role of a judge who is sworn to uphold the law and seek the truth. Matter of Myers v. State Commission on Judicial Conduct, ____ NY2d ____ (1986).

By his conduct, respondent has demonstrated that he is not fit for judicial office.

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

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

Mr. Bower was 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: August 8, 1986


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