

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

NORMAN H. SHILLING,

a Judge of the Civil Court of the City
of New York, Kings County.

Determination

BEFORE: Mrs. Gene Robb, Chairwoman
Honorable Fritz W. Alexander, II
David Bromberg
Honorable Richard J. Cardamone
Dolores DelBello
Michael M. Kirsch
Victor A. Kovner
Honorable Isaac Rubin
Honorable Felice K. Shea
Carroll L. Wainwright, Jr.

The respondent, Norman H. Shilling, a judge of the Civil Court of the City of New York, was served with a Formal Written Complaint dated June 4, 1979, alleging that he improperly interfered in the course of a proceeding before another judge and that he lent the prestige of his office to advance the interests of a third party, a not-for-profit corporation with which he was associated. Respondent filed an answer dated June 22, 1979.

By order dated September 4, 1979, the Commission designated the Honorable James Gibson referee to hear and report with respect to the issues herein. Pursuant to Section 44, subdivision 4, of the Judiciary Law, respondent waived confidentiality

in this proceeding and requested that any hearing be public.

By notice of motion dated September 19, 1979, respondent moved to dismiss the Formal Written Complaint for failure to state a cause of action. By order dated October 26, 1979, the Commission denied the motion.

A public hearing was held on October 29, 30, and 31 and November 1, 1979, and the report of the referee was filed on January 23, 1980.

By notice of motion dated February 1, 1980, the administrator of the Commission moved to confirm the referee's report and for a determination of misconduct and sanction. Respondent's opposition papers were filed on February 7, 1980.

The Commission heard oral argument on the issues herein on February 26, 1980. Thereafter, in executive session, the Commission considered the record of this proceeding, and now upon that record makes the following findings of fact.

1. In December, 1977, three summonses were issued against Mr. John Esteves, an employee of Associated Humane Societies of New Jersey (A.H.S.), who manages the A.H.S. facility at 224 Atlantic Avenue, Brooklyn, New York.

2. One summons was issued by the New York City Department of Health, charging operation of the Atlantic Avenue facility without a permit. The other two summonses were issued by agents of the American Society for the Prevention of Cruelty to Animals (A.S.P.C.A.), charging lack of health certificates for dogs shipped from New Jersey to New York, and lack of single cages for

dogs over three months old.

3. Between December 1977 and December 1978, respondent contacted Dr. John Kullberg, Executive Director of the A.S.P.C.A., and Eric Plasa, Director, Humane Law Enforcement of the A.S.P.C.A.

4. In his telephone conversation with Dr. Kullberg, respondent identified himself as a judge and requested that Dr. Kullberg intercede and have the A.S.P.C.A. summonses dropped and the charges dismissed. Dr. Kullberg declined, and offered instead to have his agents make an unannounced visit to the A.H.S. facility, but respondent requested a visit with notice.

5. In his telephone conversation with Eric Plasa, respondent also asked for dismissal of the charges against Mr. Esteves.

6. Respondent also contacted Dr. Alan Beck of the New York City Department of Health, Bureau of Animal Affairs, and Dr. Howard Levin, Chief Veterinarian of the City Department of Health.

7. In his telephone conversations with Dr. Beck, respondent identified himself as a judge and questioned why the permit was not being granted to A.H.S. Dr. Beck told respondent that he was doubtful as to the wisdom of having New Jersey animals brought into New York City and vice versa, because of health, social and administrative problems. Respondent dismissed Dr. Beck's arguments, became angry, and yelled and screamed at Dr. Beck to such an extent that Dr. Beck was not able to keep the phone to his ear.

8. In a subsequent telephone call to Dr. Beck, respondent was angry that the permit still had not been issued to A.H.S.

Dr. Beck explained that the site was not zoned for a kennel, and respondent yelled, screamed and said that Dr. Beck should "stop f-----g around with the Humane Society."

9. Respondent reminded Dr. Beck at least twice that respondent was a judge and also told Dr. Beck that he had more political clout than Dr. Beck. Dr. Beck perceived the telephone calls to be fraught with "attempted intimidation."

10. In his telephone conversation with Dr. Levin, respondent identified himself as a judge and asked, in a loud voice, to have the permit issued to A.H.S. Respondent questioned the reasons for the summons. He was upset and angry, and accused the Department of abusing its authority. Dr. Levin perceived respondent's tone of voice as "threatening."

11. On July 10, 1978, the case of A.S.P.C.A. and New York City Department of Health v. Esteves came before Judge Eugene Nardelli, sitting at New York City Criminal Court in Manhattan. After the case had been called, and while a settlement discussion was in progress at the bench, Judge Nardelli saw respondent sitting in the rear of the courtroom.

12. During the course of the settlement negotiations, Harry Brown, attorney for A.H.S. and Mr. Esteves, mentioned that respondent sat on the board of A.H.S.

13. After the Esteves matter was adjourned, respondent approached the bench and commented to Judge Nardelli about the case, to the effect that if the A.S.P.C.A. and Department of Health were really interested in animals, they would not be proceeding in such a manner. Judge Nardelli did not respond.

14. Respondent did not consider the impropriety of entering another judge's courtroom during the pendency of a case in which he was interested and talking to the presiding judge about the matter.

15. When the persons involved in the Esteves case left the courtroom, respondent also left. In the corridor, Mr. Brown introduced respondent to Dr. Levin. Respondent spoke to Dr. Levin about the permit and why it was being stopped. Dr. Levin replied that the problem was a zoning one. Respondent stated that zoning was not relevant, and that he had obtained this information from the building department. When Ms. Elinor Molbegott, attorney for the A.S.P.C.A., stated, "We will check into that," respondent said, "Listen, I am a judge of the Civil Court. When I make a statement of fact, it's a fact."

16. At the time of this conversation, respondent was angry and was talking in a loud tone of voice and waving his arms. Ms. Molbegott testified that respondent also made reference to "political friends." Dr. Levin considered respondent's tone to be "authoritative," perhaps "menacing."

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 33.1, 33.2(a), 33.2(c), 33.5(a) and 33.5(c)(1) of the Rules Governing Judicial Conduct and Canons 1, 2, 5A and 5C of the Code of Judicial Conduct. The charge in the Formal Written Complaint is sustained, and respondent's misconduct is established.

It was improper for respondent (i) to intercede in the Esteves case by attempting to persuade two officials of the A.S.P.C.A. with law enforcement authority to withdraw the summonses which commenced the proceeding and to have identified himself as a judge while so doing, (ii) to interfere on behalf of the A.H.S. with officials of the New York City Department of Health as to their decision not to issue a permit to A.H.S., to have identified himself as a judge while so doing, and to have addressed the City officials in a hostile, profane and loud manner, (iii) to speak in a loud voice in the courthouse corridor with the attorney for the A.S.P.C.A. and to make reference to political influence, and (iv) to interfere in the court's consideration of the Esteves case by speaking to the presiding judge on behalf of the defendants. Judge Nardelli appropriately did not respond or allow himself to be engaged in conversation with respondent on this matter.

Respondent has exhibited a disturbing disregard of the ethical obligations required of all judges. He has used the prestige of his office to assert special influence on behalf of a third party and brought disrepute to the judiciary by his vulgar and abrasive public manner.

Respondent has shown little or no understanding of the standards of demeanor incumbent upon all judges as expressed in the Rules Governing Judicial Conduct. A judge's obligation to adhere to those standards is not limited to the courtroom. Matter of Kuehnel v. State Commission on Judicial Conduct, ___NY2d___ (Mar. 18, 1980).

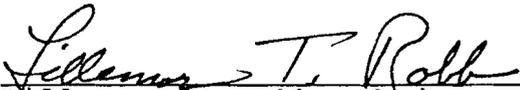
The Commission finds the blatant impropriety respondent has evinced to be seriously compounded by his refusal in this record to acknowledge that his actions even appeared improper. Respect for the judiciary has been diminished both by respondent's conduct and the appearance of impropriety thereby engendered.

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

All concur.

CERTIFICATION

This is to certify that the foregoing is the determination of the State Commission on Judicial Conduct, containing findings of fact and conclusions of law required by Section 44, subdivision 7, of the Judiciary Law.


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

Dated: April 9, 1980
Albany, New York

APPEARANCES:

Gerald Stern (Stanley A. Bass and Susan Shapiro, Of Counsel)
for the Commission

Stanley D. Steinhaus for Respondent