

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

KARL T. BOWERS,

a Justice of the Chemung Town Court,
Chemung County.

THE COMMISSION:

Lawrence S. Goldman, Esq., Chair
Honorable Frances A. Ciardullo, Vice Chair
Stephen R. Coffey, Esq.
Colleen C. DiPirro
Richard D. Emery, Esq.
Raoul Lionel Felder, Esq.
Christina Hernandez, M.S.W.
Honorable Daniel F. Luciano
Honorable Karen K. Peters
Alan J. Pope, Esq.
Honorable Terry Jane Ruderman

APPEARANCES:

Robert H. Tembeckjian (John J. Postel, Of Counsel) for the
Commission

Moriarty & Eraca-Cornish, LLP (by Richard C. Moriarty) for Respondent

The respondent, Karl T. Bowers, a justice of the Chemung Town Court,
Chemung County, was served with a Formal Written Complaint dated July 9, 2004,

containing one charge. Respondent filed an answer dated July 28, 2004.

On September 14, 2004, the administrator of the Commission, respondent's counsel and respondent entered into an Agreed Statement of Facts pursuant to Judiciary Law §44(5), stipulating that the Commission make its determination based upon the agreed facts, recommending that respondent be censured and waiving further submissions and oral argument.

On September 23, 2004, the Commission approved the Agreed Statement of Facts and made the following determination.

1. Respondent has been a justice of the Chemung Town Court, Chemung County since January 1, 2001. Respondent is not an attorney.
2. On January 14, 2004, respondent was contacted by John McCormick, a business acquaintance, about a Speeding ticket (79 mph in a 55 mph zone) that Mr. McCormick had received in the Town of Wayland, Steuben County.
3. Respondent, who works as a private business consultant through a local employment agency, knew Mr. McCormick through respondent's former employment at Weyheuser Corporation, where Mr. McCormick is employed in a managerial position. Respondent has continued to maintain a business relationship with Weyheuser Corporation through his private consulting business.
4. Mr. McCormick sought respondent's assistance in obtaining a reduction of the Speeding charge. Respondent agreed to contact the presiding judge on Mr. McCormick's behalf and notify him of the harm that a conviction could have on Mr.

McCormick's private employment. Respondent understood that Mr. McCormick's private employment required extensive driving.

5. Between January 19, 2004, and January 25, 2004, respondent twice called the Wayland Town Court in unsuccessful attempts to speak with Wayland Town Justice Thomas Recktenwald about Mr. McCormick's case.

6. On or about January 25, 2004, respondent sent a letter on judicial stationery to Judge Recktenwald, requesting special consideration on behalf of Mr. McCormick. Respondent attached a copy of Mr. McCormick's ticket to the letter.

7. Respondent's letter stated:

I am the Judge from the Town of Chemung, Chemung County. I would like to ask if you would consider in reviewing the attached ticket that my relative had received while enroute to his residence from the Chemung County area.

I don't normally request help in matters like this one, but he is a manager with a large paper company in Rochester and he needs to avoid any points. His company is Weyheuser Packaging.

I had called your office, but you were not available. I will have John send in his yellow copy this week.

Again, if you can help out I would appreciate this, and if not, I will understand.

8. Respondent signed the letter as "Judge Karl T. Bowers Sr."

9. In his letter, respondent falsely identified Mr. McCormick as his "relative."

10. After receiving respondent's letter, Judge Recktenwald promptly

disqualified himself from the case and transferred it to his co-judge, Charles W. Lander.

11. On January 25, 2004, without any knowledge of respondent's having sent the letter on his behalf, Mr. McCormick mailed a plea of guilty to the Speeding charge to the Wayland Town Court.

12. On February 13, 2004, Judge Lander imposed a \$125 fine and a \$55 surcharge on Mr. McCormick, which he paid.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 100.1, 100.2(A), 100.2(B), 100.2(C) and 100.4(A)(1) of the Rules Governing Judicial Conduct and should be disciplined for cause, pursuant to Article 6, Section 22, subdivision a, of the New York State Constitution and Section 44, subdivision 1, of the Judiciary Law. Charge I of the Formal Written Complaint is sustained, and respondent's misconduct is established.

It is improper for a judge to ask another judge to grant special consideration to a defendant. By making such a request, respondent violated the Rules enumerated above and engaged in ticket-fixing, which is a form of favoritism that has long been condemned. In *Matter of Byrne*, 47 NY2d (b), (c) (1979), the Court on the Judiciary declared that "a judicial officer who accords or requests special treatment or favoritism to a defendant in his court or another judge's court, is guilty of *malum in se* misconduct constituting cause for discipline." Ticket-fixing was equated with favoritism, which the Court stated "is wrong, and has always been wrong" (*Id.* at [b]).

In the 1970s and 1980s, the Commission uncovered a widespread pattern of

ticket-fixing throughout the state and disciplined nearly 150 judges for the practice. With the benefit of a significant body of case law, every judge in the state should be well aware that such conduct is prohibited.

Here, respondent acceded to the request of a business acquaintance for assistance with a Speeding ticket. Respondent had ample opportunity to reflect upon the impropriety of asking for special consideration since, over a period of several days, he made two telephone calls but was unable to reach the presiding judge. Finally, he sent a letter on judicial stationery that was clearly a request for special consideration.

Underscoring the personal basis of the favor he requested, respondent falsely described the defendant, who was actually a business acquaintance, as “my relative.” Respondent’s letter prompted the presiding judge, upon receipt of respondent’s letter, to disqualify himself from the case.

In *Matter of Reedy v. Comm. on Judicial Conduct*, 64 NY2d 299, 302 (1985), the Court of Appeals stated that “[t]icket-fixing is misconduct of such gravity as to warrant removal,” even for a single transgression. (In *Reedy*, the judge had engaged in a new ticket-fixing episode after being censured for such conduct.) The Court reiterated that view in *Matter of Edwards v. Comm. on Judicial Conduct*, 67 NY2d 153, 155 (1986), stating that “as a general rule, intervention in a proceeding in another court should result in removal,” although mitigating factors in the case warranted a reduced sanction (censure). In *Edwards*, a town justice called the judge handling his son’s traffic case, inquired about procedures and sent a note stating, “Any assistance you may render will be greatly appreciated”; while such conduct was improper, the Court held that in light of

mitigating factors (the judge was cooperative and contrite, had an unblemished record in 21 years on the bench, and his judgment was “somewhat clouded by his son’s involvement”), the conduct was not “so egregious as to warrant his removal from the Bench” (*Id.* at 155, 154). *See also Matter of Steria*, unreported (Comm. on Judicial Conduct, Nov 13, 1981) (judge was “severely censured” for a single instance of ticket-fixing after sending a letter to another judge on behalf of a defendant, asking to “see what you can do for her”; the judge knowingly engaged in misconduct, having recently been advised at a training course that use of official stationery to request special consideration was improper).

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

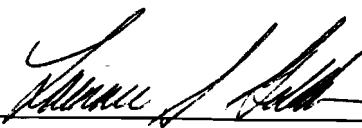
Mr. Goldman, Judge Ciardullo, Mr. Coffey, Ms. DiPirro, Mr. Emery, Mr. Felder, Judge Luciano, Judge Peters and Judge Ruderman concur.

Ms. Hernandez and Mr. Pope were not present.

CERTIFICATION

It is certified that the foregoing is the determination of the State Commission on Judicial Conduct.

Dated: November 12, 2004



Lawrence S. Goldman, Esq., Chair
New York State
Commission on Judicial Conduct