

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

ANTHONY J. CAVOTTA,

a Justice of the Stillwater Town and
Village Courts, Saratoga County.

THE COMMISSION:

Henry T. Berger, Esq., Chair
Helaine M. Barnett, Esq.
Honorable Evelyn L. Braun*
E. Garrett Cleary, Esq.
Mary Ann Crotty
Lawrence S. Goldman, Esq.
Honorable Juanita Bing Newton
Honorable Eugene W. Salisbury
Barry C. Sample
John J. Sheehy, Esq.*
Honorable William C. Thompson

APPEARANCES:

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

Cade & Saunders, P.C. (By Daniel J. Persing) for
Respondent

The respondent, Anthony J. Cavotta, a justice of the
Stillwater Town and Village Courts, Saratoga County, was served
with a Formal Written Complaint dated February 24, 1994, and an
Amended Formal Written Complaint dated June 27, 1994, alleging
that he improperly required traffic defendants to attend

*The terms of Judge Braun and Mr. Sheehy expired on
March 31, 1995. The vote in this matter was on March 2, 1995.

pre-trial, ex parte conferences. Respondent filed an answer to the Formal Written Complaint on March 14, 1994, and answered the Amended Formal Written Complaint on July 19, 1994.

By order dated April 12, 1994, the Commission designated Vincent D. Farrell, Esq., as referee to hear and report proposed findings of fact and conclusions of law. A hearing was held on August 2, 1994, and the referee filed his report with the Commission on October 18, 1994.

By motion dated December 14, 1994, the administrator of the Commission moved to confirm the referee's report and for a determination that respondent be censured. Respondent opposed the motion by cross motion dated February 6, 1995. The administrator filed a reply dated February 15, 1995.

On March 2, 1995, the Commission heard oral argument, at which respondent and his counsel appeared, and thereafter considered the record of the proceeding and made the following findings of fact.

As to Charge I of the Amended Formal Written Complaint:

1. Respondent has been a justice of the Stillwater Village Court since 1977. He has been a justice of the Stillwater Town Court since 1983.

2. Until March 1994, respondent routinely required all defendants who had pleaded not guilty by mail to traffic infractions to appear before him for pre-trial "conferences."

3. Vehicle and Traffic Law §1806 requires that a judge set a trial date upon receipt of a not-guilty plea by mail.

4. No prosecuting authority was notified of the pre-trial conferences, and none participated in the proceedings.

5. At the conferences, respondent routinely advised defendants to read the red portion of their traffic tickets which informs them that a guilty plea is the equivalent of a conviction after trial. He again asked them how they wished to plead. Only when they pleaded not guilty would he tell them that they had a right to a trial and that they would have to retain an attorney to represent them if they wished to plea bargain with the District Attorney's Office. Defendants who pleaded guilty were not advised that they had a right to a trial and an attorney.

6. On November 4, 1992, Andrew P. Chouffi was charged with Speeding in the Village of Stillwater. He pleaded not guilty by mail. By letter dated November 27, 1992, respondent directed Mr. Chouffi to appear in court on December 21, 1992. Respondent did not set a trial date, as required by Vehicle and Traffic Law §1806.

7. On December 21, 1992, Mr. Chouffi appeared before respondent without counsel. Neither the arresting officer nor a prosecutor participated in the proceeding. Mr. Chouffi asked to speak to a prosecutor. Respondent said that he could not and suggested that he "get an attorney" if he sought a charge reduction. Respondent adjourned the matter.

8. Mr. Chouffi subsequently hired an attorney who negotiated a plea bargain with the prosecutor.

9. On December 19, 1991, Edmund G. Kapper was charged with Speeding in the Village of Stillwater. He pleaded not guilty by mail. By letter dated December 23, 1991, respondent directed Mr. Kapper to appear in court on January 20, 1992. Respondent did not set a trial date, as required by Vehicle and Traffic Law §1806.

10. On January 20, 1992, Mr. Kapper appeared before respondent without counsel. Neither the arresting officer nor a prosecutor participated in the proceeding.

11. Respondent asked Mr. Kapper how he pleaded. When he said, "Not guilty," respondent asked him why he was pleading not guilty.

12. Mr. Kapper asked whether he needed an attorney. Respondent replied that, if he planned to plea bargain, he would probably need a lawyer.

13. The case was adjourned to March 16, 1992, for trial. On the trial date, Mr. Kapper again appeared without counsel. Respondent again asked Mr. Kapper how he pleaded, and Mr. Kapper repeated his not-guilty plea. Mr. Kapper pointed out a discrepancy between his ticket and the police officer's supporting deposition as to the posted speed limit. Respondent said that he would allow Mr. Kapper to plead guilty to Speeding 13 miles over the limit instead of 23 miles over the limit, as alleged in the supporting deposition. Mr. Kapper refused, and

the case was tried. Respondent found him guilty of Speeding 23 miles over the limit.

14. On January 22, 1992, Timothy W. Loftin was charged with Speeding in the Village of Stillwater. He pleaded not guilty by mail. By letter dated March 13, 1992, respondent directed Mr. Loftin to appear in court on April 20, 1992. Respondent did not set a trial date, as required by Vehicle and Traffic Law §1806.

15. On April 20, 1992, Mr. Loftin appeared before respondent without counsel. Neither the arresting officer nor a prosecutor participated in the proceeding.

16. Respondent asked Mr. Loftin how he pleaded. The defendant asked respondent to dismiss the charge because he had not received a supporting deposition within 30 days. Respondent rejected the request.

17. Respondent told Mr. Loftin that he had two choices: to get a lawyer, which would cost "all kinds" of money, or to pay a fine. Mr. Loftin asked respondent again to dismiss the charge. Respondent replied, "That's not one of your choices. You can either get a lawyer and try to plea bargain with the lawyer and have it reduced, or I'll drop the fine."

18. Mr. Loftin decided to plead guilty and pay a fine.

19. On March 18, 1993, Michael V. McKeel was charged with Failure To Stop For A Stop Sign in the Village of Stillwater. He pleaded not guilty by mail. By letter dated May 28, 1993, respondent directed Mr. McKeel to appear in court

on June 21, 1993. Respondent did not set a trial date, as required by Vehicle and Traffic Law §1806.

20. On June 21, 1993, Mr. McKeel appeared before respondent without counsel. Neither the arresting officer nor a prosecutor participated in the proceeding.

21. Respondent asked Mr. McKeel what his "problem" was, and Mr. McKeel explained that, because of an ice storm, stopping was difficult on the day that he was charged. Respondent offered to adjourn the charge in contemplation of dismissal, and Mr. McKeel accepted.

22. On December 18, 1992, Lance R. Plunkett was charged with Speeding in the Village of Stillwater. He pleaded not guilty by mail. By letter dated January 15, 1993, respondent directed Mr. Plunkett to appear in court on March 15, 1993. Respondent did not set a trial date, as required by Vehicle and Traffic Law §1806.

23. On March 15, 1993, Mr. Plunkett appeared before respondent without counsel. Mr. Plunkett is a lawyer but never informed anyone at the court of that fact. Neither the arresting officer nor a prosecutor participated in the proceeding.

24. Respondent asked Mr. Plunkett whether there was anything that he wanted to say and inquired as to whether the arresting officer had pursued him. Respondent said that he would have to obtain the officer's version and adjourned the case for trial.

25. On the adjourned date, Mr. Plunkett and a prosecutor negotiated a plea.

26. Respondent abandoned his practice of requiring pre-trial "conferences" in March 1994, after the Commission commenced this proceeding.

As to Charge II of the Amended Formal Written Complaint:

27. On March 15, 1993, Karen A. Rauch appeared before respondent in the Stillwater Village Court on a charge of Failure To Stop For A School Bus. Ms. Rauch pleaded not guilty and told respondent that she did not intend to retain an attorney.

28. Respondent asked her to explain what had happened. Without being sworn, Ms. Rauch explained the circumstances. Neither the arresting officer nor a prosecutor was present, and no witnesses gave testimony.

29. Respondent then declared that the fine was \$50 and Ms. Rauch had 30 days to pay it. He marked the court's copy of the ticket, "4/19/93 to pay fine \$50.00."

30. Ms. Rauch complained to the Office of Court Administration, and the case was subsequently transferred to another judge.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated the Rules Governing Judicial Conduct, 22 NYCRR 100.1, 100.2(a), 100.3(a)(1)

and 100.3(a)(4), and Canons 1, 2A, 3A(1) and 3A(4) of the Code of Judicial Conduct. Charges I and II of the Amended Formal Written Complaint are sustained, and respondent's misconduct is established.

Instead of immediately scheduling a trial as the law requires when a defendant in a traffic case pleads not guilty by mail (see, Vehicle and Traffic Law §1806), respondent routinely required defendants to appear for unauthorized, ex parte "conferences."

The coercive nature of these proceedings is illustrated by the five specifications of Charge I. No prosecuting authority appeared, and unrepresented defendants were told that they would have to hire attorneys at their expense in order to negotiate a plea or return to court at their inconvenience in order to obtain a trial. The defendants were repeatedly asked to restate their pleas and, on occasion, were asked to explain why they were pleading not guilty. In two of the cases, respondent offered to reduce the charge or grant an adjournment in contemplation of dismissal in order to dispose of the matter. In these circumstances, the defendants could have had little doubt that respondent wanted the matter concluded without a trial.

Even if, as he contends, he did not intend to coerce pleas by these measures, respondent should have known that defendants charged with minor infractions, carrying the

likelihood of only small fines, would often choose to plead guilty rather than go to the expense of hiring an attorney or the inconvenience of returning to court.

Requiring such proceedings on a regular basis constitutes judicial misconduct (Matter of Masner, 1990 Ann Report of NY Commn on Jud Conduct, at 133, 134), and the Commission has warned that such a requirement is contrary to law, an unnecessary burden on defendants and per se coercive (see, "Coercion of Pleas in Traffic Cases," 1990 Ann Report of NY Commn on Jud Conduct, at 43-44).

Respondent's misconduct is compounded by his handling of Rauch, in which he convicted the defendant without a plea or trial. (See, Matter of McGee v State Commission on Judicial Conduct, 59 NY2d 870; Matter of Curcio, 1984 Ann Report of NY Commn on Jud Conduct, at 80).

In determining sanction, we have taken into consideration that respondent has discontinued requiring his improper pre-trial conferences. (See, Matter of LaBelle v State Commission on Judicial Conduct, 79 NY2d 350, 363; Matter of Wood, 1991 Ann Report of NY Commn on Jud Conduct, at 82, 87).

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

Mr. Berger, Ms. Barnett, Judge Braun, Mr. Cleary, Ms. Crotty, Mr. Goldman, Judge Newton, Judge Salisbury, Mr. Sheehy and Judge Thompson concur.

Mr. Sample 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: May 3, 1995

Henry T. Berger
Henry T. Berger, Esq., Chair
New York State
Commission on Judicial Conduct