

**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**

ERNEST J. CONTI,

a Justice of the Amsterdam Town  
Court, Montgomery County.

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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 (Henry S. Stewart, Of Counsel) for the  
Commission  
  
Michael Raphael for Respondent

The respondent, Ernest J. Conti, a justice of the  
Amsterdam Town Court, Montgomery County, was served with a  
Formal Written Complaint dated December 3, 1985, alleging that  
he improperly dismissed a case pending before another judge,  
that he failed to disqualify himself in a case in which his

personal attorney was a party and that he improperly dismissed 31 cases without hearing the prosecutor. Respondent filed an answer dated December 11, 1985.

By order dated January 10, 1986, the Commission designated Marjorie E. Karowe, Esq., as referee to hear and report proposed findings of fact and conclusions of law. A hearing was held on April 25 and June 17, 1986, and the referee filed her report with the Commission on November 25, 1986.

By motion dated December 31, 1986, 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 on February 9, 1987. Oral argument was waived.

On February 19, 1987, the Commission considered the record of the proceeding and made the following findings of fact.

As to Charge I of the Formal Written Complaint:

1. Respondent is a justice of the Amsterdam Town Court and has been since January 1, 1978.

2. On September 18, 1984, John G. Reedy was issued a ticket for Speeding in the Town of Amsterdam by Trooper John Cuddy of the State Police. The ticket was returnable before Judge Helen Bieniek of the Amsterdam Town Court.

3. Trooper Cuddy prepared several copies of the ticket, all alleging a violation of Section 1180(d) of the Vehicle and Traffic Law (Speeding). Trooper Cuddy did not make any cross-outs or alterations on any of the copies of the ticket.

4. On September 27, 1984, Mr. Reedy was arraigned on the Speeding charge before Judge Bieniek. He pled not guilty, and Judge Bieniek adjourned the matter to October 25, 1984, in her court.

5. When Mr. Reedy appeared, Judge Bieniek had before her a copy of the traffic information charging a violation of Section 1180(d) of the Vehicle and Traffic Law. The information contained no cross-outs or alterations, and Judge Bieniek made no cross-outs or alterations on the ticket.

6. After Mr. Reedy's appearance, Judge Bieniek placed the ticket and other documents in the case in a filing cabinet accessible only to Judge Bieniek, respondent and the court clerk, Deborah Szwarnowicz.

7. Judge Bieniek then reported in writing to the district attorney's office that Mr. Reedy had pled not guilty and asked the prosecutor for a recommendation as to disposition of the case.

8. Ms. Szwarnowicz was ill on September 27, 1984, and did not see the Reedy ticket until she returned to the court on October 2, 1984. She made no alterations or cross-outs on the ticket but found the file on her desk on October 2, 1984,

with the original offense charged crossed out and the ticket altered to charge a violation of Section 375(35)(c) of the Vehicle and Traffic Law (Bald Tire). A notation that the case was "dismissed 9/25/84" was added to the top of the ticket.

9. The case did not come before Judge Bieniek between September 27 and October 2, 1984. She did not make the alterations to the ticket, did not reduce the charge or dismiss the case.

10. Respondent or someone at his direction altered the ticket. Respondent reduced the charge from Speeding to Bald Tire and dismissed the case.

11. Respondent reduced the charge and dismissed the case without informing or hearing the district attorney's office or the arresting officer and without having a written motion before him, as required by Section 170.45 of the Criminal Procedure Law.

12. Respondent lacked candor when he testified in this proceeding that he received the Reedy ticket from Trooper Cuddy at his home already bearing the alterations in the charge and that Mr. Reedy personally appeared before respondent and contended that he had repaired the bald tire.

13. Mr. Reedy is the son of James H. Reedy, former justice of the Galway Town Court, Saratoga County. Respondent knew Judge Reedy during the 23 years that respondent was a state

trooper. Respondent had been in Judge Reedy's home many times in the course of his business as a trooper.

14. On October 16, 1984, the district attorney's office consented by sending a form to Judge Bieniek to a reduction in the charge against Mr. Reedy to Section 1120(a) of the Vehicle and Traffic Law and recommended a fine of \$100 based on a second conviction within 18 months.

As to Charge II of the Formal Written Complaint:

15. On November 1, 1984, Trooper Cuddy issued a ticket to Richard A. Insogna, charging him with Speeding in the Town of Amsterdam. Trooper Cuddy knew Mr. Insogna to be an Amsterdam attorney.

16. The ticket was returnable on November 13, 1984, before respondent.

17. Respondent and Mr. Insogna have been personal friends for 20 years. Mr. Insogna represented respondent continuously in a divorce action and in a medical malpractice claim from 1981 to late 1985.

18. A few days after Mr. Insogna received the ticket, respondent called by telephone and told him that he need not appear on the return date, that there had been a mistake and that the charge was being withdrawn or dismissed. Respondent told Mr. Insogna that the arresting officer had informed

respondent that the police radar had malfunctioned and that the ticket should be dismissed.

19. Trooper Cuddy never contacted respondent or any court personnel to request that the ticket be withdrawn or dismissed.

20. On November 6, 1984, one week before the return date, respondent dismissed the Speeding charge against Mr. Insogna without making any record of his reasons.

21. Mr. Insogna had been convicted of another Speeding violation within the previous ten months and had accumulated six points on his driver's license within the previous 22 months.

22. Respondent dismissed the case without notifying or hearing Trooper Cuddy or the district attorney's office and without a written motion before him, as required by Section 170.45 of the Criminal Procedure Law.

23. Respondent lacked candor when he testified in this proceeding that he based the dismissal on a conversation with Trooper Cuddy, who indicated that the radar was not operating properly and that the charge should be dismissed.

As to Charge III of the Formal Written Complaint:

24. Between January 3, 1984, and January 22, 1985, respondent dismissed charges against 23 defendants, as set forth in Schedule A of the Formal Written Complaint, without notifying

or hearing the district attorney's office, as required by Section 170.45 of the Criminal Procedure Law.

25. In four of the 23 cases (Reedy, Tambasco, Page and Valikonis), respondent granted the dismissal before the adjourned date, notwithstanding that the district attorney's office had recommended in writing a reduction of the charge and a fine.

26. In two of the 23 cases (Gutkowski and Frank J. Conti), respondent dismissed the charges, notwithstanding that the district attorney had refused to consent to any reduction in view of the prior records of the defendants and had stated his readiness for trial.

27. Between January 5, 1984, and January 8, 1985, respondent adjourned in contemplation of dismissal charges against eight defendants, as set forth in Schedule A of the Formal Written Complaint, notwithstanding that he had not notified or heard the district attorney's office or obtained its consent to the disposition, as required by Section 170.55 of the Criminal Procedure Law.

28. At the time, respondent was familiar with the provisions of Section 170.55 of the Criminal Procedure Law.

29. In one of the eight cases (Mahoney), respondent granted the adjournment in contemplation of dismissal, notwithstanding that the district attorney had recommended reduction of the charge or trial.

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) of the Rules Governing Judicial Conduct and Canons 1, 2, 3A(1), 3A(4) and 3C(1) of the Code of Judicial Conduct. The charge in the Formal Written Complaint is sustained, and respondent's misconduct is established.

With respect to the Reedy matter, the credible evidence establishes that respondent reached out to take a case pending before another judge, altered documents to reflect that a less serious offense had been charged and improperly dismissed the case without hearing the prosecutor. Such extraordinary circumstances lead to the conclusion that respondent intervened in the case as a matter of favoritism. That respondent knew the defendant's father, who was also a judge, supports that conclusion.

Respondent's disposition of the Insogna matter also conveyed an unmistakable appearance of favoritism. Without a motion before him by either party and without notifying the prosecutor, respondent dismissed a charge against his personal attorney who was also a long-time friend, ignoring legal procedures and a requirement that he disqualify himself in matters in which his impartiality might reasonably be questioned. Section 100.3(c)(1) of the Rules Governing Judicial Conduct.

The granting of special consideration by a judge is wrong and has always been wrong. Matter of Byrne, 47 NY2d(b) (Ct. on the Judiciary 1978). It has long been condemned by the courts and this Commission (Matter of Dixon v. State Commission on Judicial Conduct, 47 NY2d 523 [1979]; Matter of Bulger v. State Commission on Judicial Conduct, 48 NY2d 32 [1979]; "Ticket-Fixing: The Assertion of Influence in Traffic Cases," Interim Report by the State Commission on Judicial Conduct [June 20, 1977]), and may warrant removal from office upon a single transgression (Matter of Reedy v. State Commission on Judicial Conduct, 64 NY2d 299 [1985]).

Respondent compounded his misconduct by testifying falsely in this proceeding as to his reasons for dismissing the Reedy and Insogna cases. 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, 67 NY2d 550 (1986); Matter of Steinberg v. State Commission on Judicial Conduct, 51 NY2d 74, 78 (fn.) (1980).

In addition, respondent failed to comply with the law by dismissing or adjourning in contemplation of dismissal 31 cases without giving the prosecutor the opportunity to be heard.

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

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

Mr. Cleary and Judge Rubin were 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: March 23, 1987

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