

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

CHRISTOPHER H. D'AMANDA,

a Justice of the Penfield Town
Court, Monroe County.

THE COMMISSION:

Mrs. Gene Robb, Chairwoman
Honorable Myriam J. Altman
Henry T. Berger, Esq.
John J. Bower, Esq.
Honorable Carmen Beauchamp Ciparick
E. Garrett Cleary, Esq.
Dolores DelBello
Victor A. Kovner, Esq.
Honorable William J. Ostrowski *
Honorable Isaac Rubin
John J. Sheehy, Esq.

APPEARANCES:

Gerald Stern (John J. Postel, Of Counsel), for the
Commission

Timothy K. Burgess for Respondent

* Judge Ostrowski's term expired on March 31, 1989. The vote in this matter was on March 30, 1989. The Honorable Eugene W. Salisbury was appointed to the Commission for a term commencing April 1, 1989.

The respondent, Christopher H. D'Amanda, a justice of the Penfield Town Court, Monroe County, was served with a Formal Written Complaint dated May 6, 1988, alleging that he abused the authority of his office in three traffic incidents. Respondent filed an answer dated May 31, 1988.

By order dated June 13, 1988, the Commission designated Peter J. Murrett, Jr., Esq., as referee to hear and report proposed findings of fact and conclusions of law. A hearing was held on July 26, 1988, and the referee filed his report with the Commission on November 21, 1988.

By motion dated January 27, 1989, the administrator of the Commission moved to confirm in part and disaffirm in part the referee's report, to adopt additional findings and conclusions and for a determination that respondent be censured. Respondent opposed the motion by cross motion on February 15, 1989. The administrator filed a reply on March 2, 1989. Oral argument was waived.

On March 30, 1989, 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 has been a justice of the Penfield Town Court since January 1, 1978.

2. On July 1, 1987, while driving on Route 104 in the Town of Williamson, respondent was stopped by State Trooper Michael J. Pray.

3. Respondent left his vehicle, met the trooper on the roadside and asked why he had been stopped.

4. Trooper Pray asked for respondent's license and registration and told him to return to his vehicle. Respondent was not carrying his license and registration.

5. Respondent replied that he did not have to return to his vehicle and asked again why he had been stopped. The trooper told him that he felt that respondent had been following too closely and again told him to return to his vehicle.

6. Respondent continued to protest that the trooper had had no reason to stop him. Trooper Pray told respondent a total of about five times to return to his vehicle and that he would radio for a computer check on respondent's license plates. The trooper ultimately threatened to arrest respondent for disorderly conduct if he did not return to his vehicle.

7. Respondent was upset, angry and argumentative.

8. He returned to his vehicle and drove away.

9. Trooper Pray pursued him and stopped him a second time. He approached respondent's vehicle and told him that he was going to be ticketed for Failure To Obey A Police Officer.

10. Trooper Pray then returned to his patrol car to run a check on respondent's car. Respondent then got out of his

vehicle and walked to the passenger side of the patrol car. The trooper asked respondent whether he was C.H. D'Amanda, as his registration check had indicated. Respondent replied that he was Christopher D'Amanda. The trooper then began writing a ticket.

11. Respondent leaned into the patrol car, touched the trooper's hand and said, "Don't write that ticket." The trooper told respondent to get his hands and body out of the patrol car, and respondent complied.

12. Respondent apologized to the trooper and identified himself as a Penfield town justice. Respondent said that the ticket would "cause a lot of problems."

13. The trooper accepted the apology and told respondent that he would only issue a ticket for Failure To Obey A Police Officer.

14. Respondent was convicted of the charge on September 1, 1987, and was given a conditional discharge.

As to Charge II of the Formal Written Complaint:

15. On November 2, 1986, respondent was stopped for Speeding on Route 286 in the Town of Walworth by Trooper Steven T. White.

16. Respondent gave Trooper White his vehicle registration but was not carrying his driver's license. Trooper White returned to his patrol car and contacted the police

station to obtain respondent's address and other information in order to issue him a ticket for Speeding.

17. Respondent left his vehicle, approached Trooper White and asked, "Are you going to write me a ticket?"

18. When the trooper responded in the affirmative, respondent said, "Well, I know all about these things. I am the Penfield town justice."

19. Trooper White responded, "Why didn't you tell me that in the first place?" He then located respondent's name on a roster of local judges and allowed respondent to leave without issuing a ticket.

As to Charge III of the Formal Written Complaint:

20. On a Sunday morning in the spring or summer of 1986, respondent was stopped for speeding on Route 286 in the Town of Walworth by Trooper John P. Del Gaudio.

21. Respondent told the trooper that he was not carrying his driver's license and added, "You are not going to believe this, but I am a town justice."

22. Trooper Del Gaudio asked for identification that respondent was a judge, but he could supply none. The trooper then contacted a fellow trooper by radio and verified that respondent was a town justice in Penfield.

23. The trooper then advised respondent to watch his speed, told him to have a nice day and allowed him to leave without issuing a ticket.

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

On three occasions, respondent used the prestige of his judicial office to avoid receiving traffic tickets, in violation of Section 100.2(c) of the Rules Governing Judicial Conduct. "A judge may not flout the laws he is sworn to uphold when they are applied to him personally and expect to sustain the confidence and trust of the people in whose name he administers justice." Matter of Barr, 1981 Annual Report 139, 142 (Com. on Jud. Conduct, Oct. 3, 1980).

The mere mention of his judicial office in order to obtain treatment not generally afforded to others violates the canons of judicial ethics. "The absence of a specific request for favorable treatment or special consideration is irrelevant...." Matter of Edwards v. State Commission on Judicial Conduct, 67 NY2d 153, 155 (1986).

In addition, respondent's other conduct during the incident involving Trooper Pray failed to conform to the high standards of conduct expected of every judge, on or off the bench. See Matter of Kuehnel v. State Commission on Judicial Conduct, 49 NY2d 465, 469 (1980). It was improper for him to persistently and angrily argue with the trooper about why he was stopped, to fail to comply with repeated orders to return to his vehicle, to attempt to leave the scene when he knew that he was expected to wait and to touch the trooper's hand and say, "Don't write that ticket."

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

Mrs. Robb, Mr. Berger, Mr. Bower, Mr. Cleary, Mrs. DelBello, Mr. Kovner and Mr. Sheehy concur.

Judge Altman, Judge Ciparick and Judge Ostrowski dissent as to sanction only and vote that respondent be admonished.

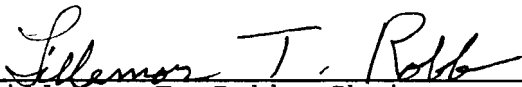
Judge Rubin was not present.

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: April 26, 1989


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