

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

DAVID P. DANIELS,

a Justice of the Guilford Town Court,
Chenango County.

THE COMMISSION:

Honorable Thomas A. Klonick, Chair
Stephen R. Coffey, Esq., Vice Chair
Honorable Rolando T. Acosta
Joseph W. Belluck, Esq.
Joel Cohen, Esq.
Richard D. Emery, Esq.
Paul B. Harding, Esq.
Elizabeth B. Hubbard
Nina M. Moore
Honorable Karen K. Peters
Honorable Terry Jane Ruderman

APPEARANCES:

Robert H. Tembeckjian (Charles Farcher, Of Counsel) for the Commission

Scott Clippinger for the Respondent

The respondent, David P. Daniels, a Justice of the Guilford Town Court,
Chenango County, was served with a Formal Written Complaint dated February 11, 2010,

containing one charge. The Formal Written Complaint alleged that respondent improperly intervened on behalf of a defendant in a traffic case. Respondent filed a Verified Answer dated March 8, 2010.

By Order dated April 29, 2010, the Commission designated Honorable Frank J. Barbaro as referee to hear and report proposed findings of fact and conclusions of law. A hearing was held on June 21, 2010, in Albany. The referee filed a report dated September 13, 2010.

The parties submitted briefs with respect to the referee's report and the issue of sanctions. Counsel to the Commission recommended the sanction of removal, and respondent's attorney recommended dismissal of the charge. On December 8, 2010, the Commission heard oral argument and thereafter considered the record of the proceeding and made the following findings of fact.

1. Respondent has served as a Justice of the Guilford Town Court, Chenango County, since 1995. He is not an attorney. At all relevant times herein, he was employed as Transportation Director for the Norwich City School District.

2. On October 7, 2008, Larry Bates was involved in a motor vehicle accident while operating a school bus for the Norwich City School District. The bus operated by Mr. Bates struck a passenger vehicle while making a right turn. Mr. Bates telephoned the bus garage and informed respondent's secretary of the accident. Respondent, who was Mr. Bates' supervisor, went to the scene of the accident.

3. When respondent arrived, a New York State Trooper was in the

process of issuing a ticket to Mr. Bates for Failure To Yield Right of Way. The ticket was returnable in the Norwich Town Court on November 13, 2008.

4. Either the trooper or Mr. Bates gave the ticket to respondent.

Respondent drove Mr. Bates to the hospital for drug/alcohol testing.

5. Respondent took possession of the ticket issued to Mr. Bates and said that he would take it to the Norwich Town Court.

6. Several weeks after the accident, respondent went to the Norwich Town Court. Respondent told court clerk Faye Pierce that he was looking for the Norwich Town Justice, David J. Evans. It was not a court night, and Judge Evans was not there.

7. Respondent had been to the Norwich Town Court several times to train Ms. Pierce on the court's computer program.

8. After telling Ms. Pierce about the video recording system installed on school buses, respondent showed her and court officer Kent Smith, on his laptop computer, a video of the accident in which Mr. Bates was involved. Respondent narrated the video and said that it showed that Mr. Bates was not at fault for the accident.

9. Respondent asked Ms. Pierce and Officer Smith to tell Judge Evans that respondent had "stopped by." He left Mr. Bates' copy of the ticket, on which no plea was entered, in a box on Judge Evans' desk. Ms. Pierce was unaware that respondent had left the ticket that evening.

10. Mr. Bates never appeared in the Norwich Town Court on the ticket

or entered a plea.

11. On November 20, 2008, Judge Evans dismissed the charge against Mr. Bates, with no plea or appearance by the defendant.

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), 100.3(B)(6) and 100.4(A)(3) of the Rules Governing Judicial Conduct (“Rules”) 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 insofar as it is consistent with the above findings and conclusions, and respondent’s misconduct is established.

By personally delivering his co-worker’s traffic ticket to the Norwich Town Court, showing a video of the accident to court staff and asking the staff to tell the judge of his visit to the court, respondent created the appearance that he was attempting to obtain favorable treatment for the defendant and lent the clout of his judicial status to advance his co-worker’s interests. These actions, which are undisputed in this record, were inconsistent with well-established ethical standards prohibiting a judge from using the prestige of judicial office to further private interests and requiring a judge to avoid even the appearance of impropriety (Rules, §§100.2, 100.2[C]).

After being called to the scene of the accident in his capacity as transportation director and speaking with his co-worker, who was charged in the incident,

respondent was obliged to refrain from any conduct that might convey an appearance of seeking special consideration for the defendant. As the Court of Appeals has stated:

Members of the judiciary should be acutely aware that any action they take, whether on or off the bench, must be measured against exacting standards of scrutiny to the end that public perception of the integrity of the judiciary will be preserved. There must also be a recognition that any actions undertaken in the public sphere reflect, whether designedly or not, upon the prestige of the judiciary. Thus, any communication from a judge to an outside agency on behalf of another, may be perceived as one backed by the power and prestige of judicial office. [Citations omitted.]

Matter of Lonschein, 50 NY2d 569, 571-72 (1980).

Under the circumstances presented here, respondent's actions could reasonably be construed as demonstrating his personal interest in an outcome in the case favorable to the defendant. That interest was reinforced by respondent's showing the court staff a video of the accident on his laptop computer, which he had brought with him to the court. While respondent, who had visited the court on prior occasions to provide computer training to the court clerk, denies that he was attempting to "fix" the ticket and testified that showing the video was merely a demonstration of new technology, his actions, at the very least, convey an appearance of impropriety (Rules, §100.2). We also accept the referee's finding that, in narrating the video, respondent said that it showed that Mr. Bates was not at fault for the accident. This comment, which respondent denies having made, strongly suggests that respondent was attempting to act as the defendant's advocate and further supports the conclusion that the purpose of his visit was to attempt to influence the court.

As a non-attorney, respondent could not act as the defendant's legal advocate (Jud Law §478). Any such advocacy on the defendant's behalf should properly have come from the defendant himself or his attorney.

It is no excuse that respondent, as he claims, was simply trying to do a favor for his co-worker by taking the ticket to the court, since doing so under these circumstances is impermissible when the prestige of judicial office is invoked, even implicitly. *See, e.g., Matter of Magill*, 2005 Annual Report 177 (judge delivered the file of his wife's case to the transferee court, left his judicial business card on which he had noted a request for an order of protection, and told the clerk that his wife wanted an order of protection); *Matter of Edwards*, 67 NY2d 153 (1986) (judge whose son was issued a traffic ticket initiated several *ex parte* contacts with the judge handling the case). As an experienced judge, respondent should have recognized that his conduct, in its totality, could be perceived as an attempt to obtain special consideration for the defendant based on respondent's judicial status. Such conduct is improper even in the absence of an explicit request for favorable treatment, as the Court of Appeals has stated (*Id.* at 155).

Compounding the appearance of impropriety, we note that the ticket was dismissed a week after respondent's visit to the Norwich court, without a plea or appearance by the defendant. Even in the absence of any direct communication between respondent and Judge Evans prior to the dismissal, an appearance of favoritism was unavoidably created as a result of respondent's intervention in the matter.

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

Judge Klonick, Judge Acosta, Mr. Emery, Ms. Hubbard, Ms. Moore, Judge Peters and Judge Ruderman concur.

Mr. Coffey, Mr. Belluck and Mr. Cohen dissent only as to the sanction and vote that respondent be admonished.

Mr. Harding did not participate.

CERTIFICATION

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

Dated: March 25, 2011



A handwritten signature in black ink, reading "Jean M. Savanyu", is written over a horizontal line.

Jean M. Savanyu, Esq.
Clerk of the Commission
New York State
Commission on Judicial Conduct