

**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

ANGELO DARRIGO,

a Justice of the Town Court of  
Newburgh, Orange County.

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**Determination**

BEFORE: Mrs. Gene Robb, Chairwoman  
Honorable Fritz W. Alexander, II  
Honorable Richard J. Cardamone  
E. Garrett Cleary, Esq.  
Dolores DelBello  
Michael M. Kirsch, Esq.  
Victor A. Kovner, Esq.  
Honorable Isaac Rubin  
Honorable Felice K. Shea

APPEARANCES:

Gerald Stern (Robert Straus, Of Counsel) for  
the Commission  
Finkelstein, Mauriello, Kaplan and Levine  
(By Andrew M. Mauriello) for Respondent

The respondent, Angelo Darrigo, a justice of the Town Court of Newburgh, Orange County, was served with two Formal Written Complaints. The first, dated September 21, 1978, alleged that respondent failed to appear before the Commission during a duly authorized investigation, despite being so requested three times, and that he failed to reply to a letter from the Commission inquiring into his failure to appear. Respondent filed an answer dated October 5, 1978.

The second Formal Written Complaint, dated January 26, 1981, alleged misconduct with respect to (i) respondent's making and granting requests for special consideration for defendants in traffic cases, (ii) his presiding over cases involving clients and former clients of his law practice and (iii) his practicing law before other part-time lawyer-justices of the same county as his own court, and his permitting them to practice before him, in violation of the Rules Governing Judicial Conduct.

By order dated November 16, 1978, the Commission designated Francis L. Valente, Jr., Esq., referee to hear and report to the Commission with respect to the first Formal Written Complaint. The hearing was conducted on December 20, 1978, and February 9, 1979, and the report of the referee was filed on June 12, 1979.

On March 10, 1981, pursuant to Section 44, subdivision 5, of the Judiciary Law, the administrator of the Commission, respondent and respondent's counsel entered into an agreed statement of facts with respect to both Formal Written Complaints, waiving a hearing as to the second Formal Written Complaint and stipulating that the Commission make its determination on the pleadings, the referee's report as to the first Formal Written Complaint and the facts as agreed upon.

The Commission approved the agreed statement of facts and heard oral argument on May 27, 1981, as to whether respondent's misconduct was established and, if so, the appropriate sanction.

Respondent appeared with counsel for oral argument, admitted his misconduct and joined in the administrator's recommendation that censure would be an appropriate sanction. Thereafter the Commission considered the record of the proceeding and now makes the determination herein.

With respect to the first Formal Written Complaint, the Commission makes the following findings of fact.

1. On June 28, 1978, respondent, having been duly requested to appear before the Commission, failed to appear.

2. On July 18, 1978, respondent, having been duly requested to appear before the Commission, failed to appear.

3. On July 27, 1978, respondent, having been duly requested to appear before the Commission, failed to appear.

4. Respondent, having been requested by letter dated July 26, 1978, to state in writing the reasons for his repeated failure to appear before the Commission, failed to reply.

5. Respondent's repeated failure to appear before the Commission, and his failure to reply to its request for a written explanation of that conduct, resulted from (i) his misreading and misunderstanding of documents sent to him by the Commission, (ii) his reliance on the advice of his attorney and (iii) his mistaken but honest belief that his appearances and explanation were sought by the Commission on a voluntary basis.

6. Respondent acknowledges that he should have been more careful in reading the papers sent to him by the Commission, that he should have appeared before the Commission as requested and that he should have replied to the Commission's letter of July 26, 1978, as requested.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Section 42, subdivision 3, and Section 44, subdivision 3, of the Judiciary Law, Sections 33.1, 33.2(a) and 33.3(a)(1) of the Rules Governing Judicial Conduct and Canons 1, 2A and 3A of the Code of Judicial Conduct. Charges I through IV of the Formal Written Complaint dated September 21, 1978, are sustained and respondent's misconduct is established.

With respect to the second Formal Written Complaint, the Commission makes the following findings of fact.

7. On February 20, 1973, respondent sent a letter to Newburgh Town Court Justice Thomas Byrne, seeking special consideration on behalf of the defendant in People v. Raymond Saracino, a traffic case then pending before Judge Byrne.

8. On March 12, 1975, respondent sent a letter to New Windsor Town Court Justice Jerald Fiedelholtz, seeking special consideration on behalf of the defendant in People v. Isabella A. Russo, a traffic case then pending before Judge Fiedelholtz. At the time both respondent and Judge Fiedelholtz were part-time lawyer-judges in Orange County.

9. On May 8, 1975, respondent sent a letter to Cornwall Town Court Justice John DeMicell, seeking special consideration on behalf of the defendant in People v. Cohen Tart, a traffic case then pending before Judge DeMicell.

10. On September 8, 1975, respondent sent a letter to the presiding justice of the Town Court of Thompson, seeking special consideration on behalf of the defendant in People v. Joseph A. Catania, a case then pending in that court.

11. On June 17, 1976, respondent sent a letter to Plattekill Town Court Justice Wayne G. Smith, seeking special consideration on behalf of the defendant in People v. Charles DiDea, a traffic case then pending before Judge Smith.

12. On October 18, 1974, respondent sent a letter to New Windsor Town Court Justice Jerald Fiedelholtz, seeking special consideration on behalf of the defendant in People v. William Sangster, a traffic case then pending before Judge Fiedelholtz. At the time both respondent and Judge Fiedelholtz were part-time lawyer-judges in Orange County.

13. On April 11, 1974, respondent dismissed a charge of passing a red light in People v. Dennis McCormick as a result of a written communication he received from New Windsor Town Court Justice Edward A. Lahey, seeking special consideration on behalf of the defendant.

14. On April 22, 1974, respondent reduced a charge of speeding to failure to signal in People v. Edward W. Diller as a result of a written communication he received from Maybrook Village Court Justice Kenneth Petzold, seeking special consideration on behalf of the defendant.

15. On July 3, 1974, respondent reduced a charge of speeding to illegal parking in People v. Charles Levinson as a result of a written communication he received from New Windsor Town Court Justice Jerald Fiedelholtz, seeking special consideration on behalf of the defendant. At the time both respondent and Judge Fiedelholtz are part-time lawyer-judges in Orange County.

16. On July 25, 1974, respondent dismissed a charge of speeding in People v. William F. Liguori as a result of a written communication he received from Poughkeepsie City Court Judge Edward J. Filipowicz, seeking special consideration on behalf of the defendant.

17. On November 22, 1974, respondent reduced a charge of speeding to failure to signal in People v. Kathleen E. McGrath as a result of a written communication he received from Bethlehem Town Court Clerk Marie E. Oakes, seeking special consideration on behalf of the defendant.

18. On November 25, 1974, respondent granted an unconditional discharge in People v. John R. Farrett as a result of a written communication he received from Montgomery Town Court Clerk Rose Abrahams, seeking special consideration on behalf of the defendant.

19. On December 6, 1974, respondent reduced a charge of speeding to parking on the pavement in People v. James Spiconardi as a result of a written communication he received from New Windsor Town Court Justice Jerald Fiedelholtz, seeking special consideration on behalf of the defendant. At the time both respondent and Judge Fiedelholtz were part-time lawyer-judges in Orange County.

20. On August 29, 1975, respondent reduced a charge of speeding to driving with an unsafe tire in People v. Charles Levinson as a result of a written communication he received from New Windsor Town Court Justice Jerald Fiedelholtz, seeking special consideration on behalf of the defendant. At the time both respondent and Judge Fiedelholtz were part-time lawyer-justices in Orange County.

21. On October 20, 1975, respondent reduced a charge of speeding to failure to signal in People v. Theron Woolsey as a result of a written communication he received from Plattekill Town Court Justice Frank E. Berean, seeking special consideration on behalf of the defendant.

22. On November 5, 1975, respondent reduced a charge of speeding to driving with unsafe tires in People v. Robert D. Birkhead as a result of a written communication he received from New Windsor Town Court Justice Jerald Fiedelholtz, seeking special consideration on behalf of the defendant. At the time both respondent and Judge Fiedelholtz were part-time lawyer-judges in Orange County.

23. On November 25, 1975, respondent reduced a charge of speeding to failure to signal in People v. Matthew A. Chrystal as a result of a written communication he received from Cornwall Town Court Justice Joseph Thomson, seeking special consideration on behalf of the defendant.

24. On October 12, 1976, respondent reduced a charge of speeding to failure to signal in People v. Robert Coisson as a result of a written communication he received from Esopus Town Court Justice Andrew Aurigemma, seeking special consideration on behalf of the defendant.

25. On March 26, 1971, respondent failed to disqualify himself and granted an unconditional discharge in People v. Amy Osusky, notwithstanding that respondent had represented the defendant's family.

26. On March 1, 1973, respondent failed to disqualify himself and granted an unconditional discharge in People v. Sebastian Pistone, notwithstanding that respondent had represented the defendant.

27. On February 3, 1974, respondent failed to disqualify himself and dismissed a charge of insufficient lights in People v. Robert DeToro, notwithstanding that respondent had represented the defendant.

28. On January 30, 1975, respondent failed to disqualify himself and reduced a charge of speeding to failure to signal in People v. Michael J. Hubych, notwithstanding that respondent had represented the defendant.

29. On March 27, 1975, respondent failed to disqualify himself and granted an unconditional discharge in People v. Robert W. Bennett, notwithstanding that respondent had represented the defendant.

30. On July 7, 1975, respondent failed to disqualify himself and granted an unconditional discharge in People v. Dorothy J. Catania, notwithstanding that respondent had represented the defendant.

31. On March 16, 1976, respondent failed to disqualify himself and imposed an unconditional discharge in People v. Orazio S. Napoli, notwithstanding that respondent had represented the defendant.

32. On May 28, 1976, respondent failed to disqualify himself and granted an unconditional discharge in People v. Donald S. Youngs, notwithstanding that respondent had represented the defendant's family.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 33.1, 33.2, 33.3(a)(1), 33.3(a)(4), 33.3(c)(1) and 33.5(f) of the Rules

Governing Judicial Conduct and Canons 1, 2, 3A and 3C(1) of the Code of Judicial Conduct. Charges I through XXVI of the Formal Written Complaint dated January 28, 1981, are sustained and respondent's misconduct is established.

By failing to appear before the Commission as requested during a duly authorized investigation, and by failing to respond to a Commission inquiry as to his reasons for failing to appear, respondent violated those provisions of the Judiciary Law requiring his appearance and cooperation (Sections 42[3] and 44[3]). That respondent honestly misunderstood the nature of the Commission's requests mitigates but does not excuse his misconduct. A judge is required to be faithful to the law and maintain professional competence in it (Sections 33.2[a] and 33.3[a][1] of the Rules Governing Judicial Conduct).

Failure by a judge to cooperate with a Commission inquiry is a factor to be considered as to sanction. Cooley v. State Commission on Judicial Conduct, \_\_\_NY2d\_\_\_ (No.263, June 4, 1981); Matter of Jordan, 47 NY2d (xxx) (Ct. on the Judiciary 1979). In the instant case, in addition to the misunderstanding, respondent's misconduct is mitigated by his subsequent concession that he was in error. His conduct is further mitigated by his now apparent appreciation of his obligation to cooperate with Commission inquiries, and by the referee's finding that respondent would not have disregarded the Commission's directives had he realized what was required of him.

With respect to his making and granting requests for special consideration for defendants in 18 traffic cases, respondent again admitted his misconduct.

It is improper for a judge to seek to persuade another judge, on the basis of personal or other special influence, to grant special consideration to a defendant. By making ex parte requests of other judges for favorable dispositions for defendants in traffic cases, and by granting such requests from judges and others with influence, respondent violated the Rules enumerated above, which read in part as follows:

Every judge...shall himself observe high standards of conduct so that the integrity and independence of the judiciary may be preserved. [Section 33.1]

A judge shall respect and comply with the law and shall conduct himself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary. [Section 33.3(a)]

No judge shall allow his family, social or other relationship to influence his judicial conduct or judgment. [Section 33.2(b)]

No judge...shall convey or permit others to convey the impression that they are in a special position to influence him... [Section 33.2(c)]

A judge shall be faithful to the law and maintain professional competence in it... [Section 33.3(a)(1)]

A judge shall...except as authorized by law, neither initiate nor consider ex parte or other communications concerning a pending or impending proceedings... [Section 33.3(a)(4)]

Courts in this and other states, as well as the Commission, have found that favoritism is serious judicial misconduct and that ticket-fixing is a form of favoritism.

In Matter of Byrne, 47 NY2d(b) (Ct. on the Judiciary 1979), the court 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." In that case, ticket-fixing was equated with favoritism, which the court stated was "wrong and has always been wrong." Id. at (c).

As an experienced lawyer, respondent should have been fully aware of the applicable standards of conduct.

With respect to his presiding over traffic matters involving his law clients, respondent violated the applicable provision of the Rules Governing Judicial Conduct, which require a judge to disqualify himself in proceedings where his impartiality may reasonably be questioned (Section 33.3[c]). By presiding over such cases, respondent compromised the very essence of the judge's role as impartial arbiter, and he undermined public confidence in the integrity of the judiciary (Sections 33.1 and 33.2 of the Rules).

With respect to his practicing law before another part-time lawyer-judge in Orange County and allowing that judge to practice before him, respondent violated that section of the Rules which specifically prohibits part-time lawyer-judges whose courts are in the same county from practicing before each other (Section 33.5[f]). Such misconduct not only contravenes a specific rule, it also gives rise to an appearance that two part-time lawyer-judges appearing in proceedings before each other have an unfair advantage over their adversaries.

Upon measuring the totality of respondent's misconduct against the contrition he has shown and the renewed understanding he appears to have of his proper role as a judge, we are persuaded that respondent should not be removed from office.

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

All concur.

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: June 25, 1981  
Albany, New York

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