

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

BRIAN F. DE JOSEPH,

a Justice of the Supreme Court,
Onondaga County.

THE COMMISSION:

Lawrence S. Goldman, Esq., Chair
Stephen R. Coffey, Esq.
Colleen C. DiPirro
Richard D. Emery, Esq.
Raoul Lionel Felder, Esq.
Christina Hernandez, M.S.W.
Honorable Thomas A. Klonick
Honorable Daniel F. Luciano
Honorable Karen K. Peters
Alan J. Pope, Esq.
Honorable Terry Jane Ruderman

APPEARANCES:

Robert H. Tembeckjian (John J. Postel, Of Counsel) for the Commission

Emil M. Rossi for Respondent

The respondent, Brian F. DeJoseph, a Justice of the Supreme Court,
Onondaga County, was served with a Formal Written Complaint dated December 13,

2004, containing one charge. Respondent filed an answer dated January 12, 2005.

On May 6, 2005, the administrator of the Commission, respondent's counsel and respondent entered into an Agreed Statement of Facts pursuant to Judiciary Law §44(5), stipulating that the Commission make its determination based upon the agreed facts, recommending that respondent be admonished and waiving further submissions and oral argument.

On June 23, 2005, the Commission approved the agreed statement and made the following determination.

1. Respondent has been a Justice of the Supreme Court, Onondaga County since January 1, 2001. Prior to that, he served as a Syracuse City Court Judge and Supervising Judge of the Syracuse City Court. Respondent is an attorney.

2. Respondent and Robert Tisdell, an attorney who practices law in Syracuse, New York, have known each other and been friends for more than 35 years. Together, they attended the same high school, college and law school.

3. Robert L. Tisdell, II, is the son of Robert Tisdell.

4. On or about October 19, 2000, Robert L. Tisdell, II, who was 21 years old, was arrested in Syracuse on charges of Disorderly Conduct and Resisting Arrest. At the time, respondent was the Supervising Judge of the Syracuse City Court.

5. At approximately 3:00 AM, the defendant's mother, Anna Tisdell, telephoned respondent at his home and reported that the defendant had been arrested, was incarcerated and was injured. The defendant's mother was distraught and crying.

Respondent said he would drive to the jail to meet the defendant's father, Robert Tisdell.

6. Respondent was concerned about whether the defendant's injuries were serious. Respondent was also concerned about the well-being of the defendant's parents.

7. The jail is located in the Public Safety Building on State Street in Syracuse. Respondent drove to the building alone and met Mr. Tisdell outside.

8. Mr. Tisdell told respondent that his son had been beaten. Mr. Tisdell asked respondent to have his son released.

9. Respondent refused Mr. Tisdell's request that he issue an order releasing the defendant.

10. Mr. Tisdell then asked respondent for the telephone number of the judge who was assigned to arraignments. Respondent did not have the number, so he took Mr. Tisdell into his chambers, also located in the Public Safety Building on State Street.

11. While in his office with Mr. Tisdell, respondent telephoned Syracuse City Court Judge Jeffrey R. Merrill. As the Supervising Judge of the Syracuse City Court, respondent was Judge Merrill's administrative superior.

12. Respondent was aware that Judge Merrill was "on-call" for after-hours arraignments and applications. Respondent told Judge Merrill that Robert Tisdell's son had been arrested, charged and held in jail. Respondent said that Mr. Tisdell was in respondent's office and wanted to speak with Judge Merrill. Respondent gave the

telephone to Mr. Tisdell, who spoke to Judge Merrill, described his observation of the defendant's physical condition and requested that the defendant be ordered released from jail.

13. A short time thereafter, Judge Merrill telephoned respondent's chambers and told respondent that he had ordered the defendant released from custody.

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) and 100.2(C) of the Rules Governing Judicial Conduct 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, and respondent's misconduct is established.

By contacting a judge on behalf of a friend whose son had been arrested and was being held in jail, respondent lent the prestige of judicial office to advance his friend's private interests. Such assertion of special influence is clearly prohibited by the ethical standards (Section 100.2[C] of the Rules Governing Judicial Conduct). As the Court of Appeals stated in *Matter of Lonschein* (50 NY2d 569, 571-72):

No judge should ever allow personal relationships to color his conduct or lend the prestige of his office to advance the private interests of others. Members of the judiciary should be acutely aware that any action they take, whether or on 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.

After receiving a call from the defendant's mother, respondent had ample opportunity to consider his conduct as he drove to the jail to meet with the defendant's father. Although respondent appropriately refused his friend's request that he personally order the defendant's release, he telephoned the judge who was "on call" for after-hours arraignments and applications, told the judge that he was calling from his office, identified the defendant's father and then handed the phone to the father, who requested the defendant's release. As an experienced attorney, the defendant's father was presumably capable of placing the call himself and asking for the defendant's release without respondent's introduction and assistance. Instead, by initiating the call and introducing the attorney, respondent lent his implicit endorsement to the attorney's request, which was granted a short time thereafter. As the judge's administrative superior, respondent should have recognized that his after-hours call on behalf of a defendant would have particular impact on the recipient.

Notwithstanding that respondent did not make any specific request for favorable treatment, his conduct conveyed the appearance that he was lending the prestige of judicial office in order to influence the judge to grant his friend's request. Such favoritism, or even the appearance of favoritism, "is wrong, and always has been wrong," and undermines the administration of justice. *Matter of Byrne*, 420 NYS2d 70, 71 (Ct on the Judiciary 1979). *See also, Matter of LoRusso*, 1988 Annual Report 195 (Comm. on Judicial Conduct) (judge called the police station to request the release of his friend's son); *Matter of McGee*, 1985 Annual Report 176 (Comm. on Judicial Conduct) (judge

spoke to the judge and prosecutor handling his nephew's case in order to influence the bail decision); *Matter of Young*, 2001 Annual Report 129 (Comm. on Judicial Conduct) (judge contacted a Family Court hearing examiner at the request of a friend whose case was pending, acted as his friend's advocate and attempted to advance his friend's interests).

Difficult as it may be to refuse a request for help from a long-time friend under such circumstances, every judge must be mindful of the importance of adhering to the ethical standards so that public confidence in the integrity and impartiality of the judiciary may be preserved.

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

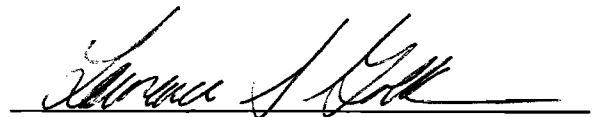
Mr. Goldman, Mr. Coffey, Ms. DiPirro, Mr. Emery, Mr. Felder, Ms. Hernandez, Judge Klonick, Judge Luciano, Mr. Pope and Judge Ruderman concur.

Judge Peters was not present.

CERTIFICATION

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

Dated: July 5, 2005



Lawrence S. Goldman, Esq., Chair
New York State
Commission on Judicial Conduct