

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

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In the Matter of the Proceeding :
Pursuant to Section 44, subdivision 4, : DETERMINATION
of the Judiciary Law in Relation to :
WALTER C. DUNBAR, :
a Justice of the Village Court of :
Watkins Glen, Schuyler County. :

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PRESENT: Mrs. Gene Robb, Chairwoman
Honorable Fritz W. Alexander, II
David Bromberg
Honorable Richard J. Cardamone
Dolores DelBello
Michael M. Kirsch
William V. Maggipinto
Honorable Isaac Rubin
Honorable Felice K. Shea
Carroll L. Wainwright, Jr.

The respondent, Walter C. Dunbar, a justice of the Village Court of Watkins Glen, Schuyler County, was served with a Formal Written Complaint dated December 11, 1978, setting forth six charges of misconduct with respect to (i) respondent's directing the defendants in six cases to make contributions to charities, identified by respondent, as a condition to discharging those six cases, and (ii) respondent's failure to disqualify himself in one of those six cases despite having participated in the investigation of the charge in that case and otherwise having personal knowledge of the facts and disputed issues.

In his answer, respondent admitted the factual allegations contained in five of the six charges in the Formal Written Complaint, and admitted in part and denied in part the factual allegations contained in the sixth charge.

The administrator of the Commission, respondent and respondent's counsel entered into an agreed statement of facts on March 14, 1979, pursuant to Section 44, subdivision 5, of the Judiciary Law, waiving the hearing provided for by Section 44, subdivision 4, of the Judiciary Law, and stipulating that the Commission make its determination on the pleadings and the facts as agreed upon, including respondent's admission of Charges I through V.

The Commission approved the agreed statement, as submitted, on March 21, 1979, determined that no outstanding issue of fact remained, and scheduled oral argument with respect to determining (i) whether to make a finding of misconduct and (ii) an appropriate sanction, if any. The administrator and respondent submitted memoranda in lieu of oral argument.

The Commission considered the record in this proceeding on May 22, 1979.

With respect to Charges I through V of the Formal Written Complaint, the Commission finds the following facts:

1. On December 11, 1976, in connection with the case of People v. Robert M. Hooper, respondent imposed a conditional discharge which required the defendant to make a payment of \$50 to a charity known as the "Seneca Santa."
2. On December 23, 1976, in connection with the case of People v. David Johnson, respondent imposed a conditional discharge which required the defendant to make a payment of \$20 to a charity known as the United Fund.

3. On December 18, 1976, in connection with the case of People v. Jeffry S. Bolt, respondent imposed a conditional discharge which required the defendant to make a payment of \$50 to a charity known as the United Fund.

4. On December 18, 1976, in connection with the case of People v. William T. Peterson, respondent imposed a conditional discharge which required the defendant to make a payment of \$50 to a charity known as the United Fund.

5. On December 18, 1976, in connection with the case of People v. Martin G. Tipaldos, respondent imposed a conditional discharge which required the defendant to make a payment of \$40 to a charity known as the United Fund.

Based upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 33.1, 33.2 and 33.5(b)(2) of the Rules Governing Judicial Conduct and Canon 5B(2) of the Code of Judicial Conduct. Charges I through V of the Formal Written Complaint are sustained, and respondent is thereby guilty of judicial misconduct.

With respect to Charge VI of the Formal Written Complaint, the Commission finds the following facts:

6. On December 23, 1976, in connection with People v. Marty Butler, in which the defendant was charged with driving with an overloaded axle on December 8, 1976, respondent:

- (a) imposed a conditional discharge which required the defendant to make a payment of \$260 to a charity known as the United Fund in lieu of a fine; and
- (b) with the maker's permission, typed in "Schuyler County United Fund" and the amount of "\$260" on a blank check signed to respondent by the defendant's employer, Keith Paddock, and sent the check to the Schuyler County United Fund.

7. Between January 7, 1977, and January 20, 1977, because respondent was upset that Keith Paddock (i) had stopped payment without notification or explanation on the \$260 check to the United Fund in connection with People v. Marty Butler, and (ii) would not return respondent's calls, respondent directed that the driving record of the defendant be investigated. Upon learning that Mr. Butler's driving license had been suspended on December 8, 1976, he reported this to Patrolman Richard Pierce, who in turn reported it to Trooper John Halstead.

8. Thereafter, respondent:

- (a) reopened People v. Marty Butler;
- (b) prepared an information for the signature of Trooper John Halstead, charging Mr. Butler with driving with an overloaded axle on December 8, 1976, for the purpose of issuing a warrant for the arrest of Mr. Butler;
- (c) requested Trooper Halstead to sign the information;
- (d) issued a warrant for the arrest of Mr. Butler on the basis of the signed information;
- (e) rejected an offer by the defendant's counsel on January 20, 1977, to pay \$260 to the court as a fine; at the time of the defendant's offer, before the above-mentioned warrant had been executed and before the appearance of the parties in court on the new charges, respondent insisted that the defendant make good a \$260 contribution to the United Fund; and
- (f) refused to consider the acceptance of a \$260 payment as a fine on January 22, 1977, when the defendant, with counsel, appeared before him and entered a plea of not guilty to all the charges.

9. Respondent's report to Patrolman Pierce that Mr. Butler's license had been suspended resulted in Patrolman Pierce charging Mr. Butler with operating while license suspended. Respondent presided over the matter to the extent of arraigning

Mr. Butler on January 22, 1977, ordering discovery and adjourning the case first to January 29, 1977, then to February 5, 1977, and then to March 9, 1977.

10. On March 9, 1977, respondent set the trial date in People v. Marty Butler as April 9, 1977, a day when the acting village court justice of Watkins Glen was scheduled to be sitting. Thereafter, the acting village court justice presided over the case and disposed of it.

11. Respondent's report to Patrolman Pierce that Mr. Butler's license had been suspended resulted in Trooper Halstead charging Mr. Paddock, Mr. Butler's employer, with permitting Mr. Butler to operate with a suspended license. Respondent presided over this case to the extent of issuing a warrant for the arrest of Mr. Paddock, arraigning Mr. Paddock on January 22, 1977, ordering discovery and adjourning the case first to January 29, 1977, then to February 5, 1977, and then to March 9, 1977.

12. On March 9, 1977, respondent set the trial date in People v. Keith Paddock as April 9, 1977, a day when the acting village court justice of Watkins Glen was scheduled to be sitting. Thereafter, the acting village court justice presided over the case and disposed of it.

Based upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 33.1, 33.2(a), 33.2(c), 33.3(a)(4), 33.3(c)(1) and 33.5(b)(2) of the Rules Governing Judicial Conduct and Canons 1, 2, 3C(1) and 5B(2) of the Code of Judicial Conduct. Charge VI of the Formal Written Complaint is sustained and respondent is thereby guilty of misconduct.

It is improper for a judge to request or require a defendant to make a contribution to a charity in lieu of a fine. In Matter of Richter, 42 N.Y.2d(aa) (Ct. on the Judiciary 1977), the court declared that discharges conditioned on contributions by the defendant to charities, "[t]hough well-intentioned...[are] completely improper. A Judge is forbidden to solicit for charity; a fortiori, he may not direct contributions to charities, particularly where the recipient is specified." Id., 42 N.Y.2d at (hh).

In the instant matter, respondent's misconduct rises to the level of that identified as improper by the court in Richter, in that he granted discharges conditioned on the defendants making charitable contributions. As a judge is prohibited by the Rules Governing Judicial Conduct from soliciting funds for a charitable organization (Section 33.5[f] of the Rules), so is he prohibited from using the power of his office to compel contributions to charities.

With respect to Charge VI of the Formal Written Complaint, involving People v. Marty Butler and People v. Keith Paddock, respondent presided over both matters despite his participation in preparing the prosecution's case in both matters, and despite his admittedly being "upset" by the pre-trial conduct of one of the defendants. By so presiding over these matters, respondent violated Section 33.3(c)(1)(i) of the Rules Governing Judicial Conduct, which requires a judge to "disqualify himself in a proceeding in which his impartiality might reasonably be questioned, including... instances where he has a personal bias

or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding."

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

This determination constitutes the findings of fact and conclusions of law required by Section 44, subdivision 7, of the Judiciary Law.

All concur.

Dated: July 3, 1979

APPEARANCES:

Valent & Callahan (By Henry Valent) for Respondent

Gerald Stern for the Commission (Stephen F. Downs, Of Counsel)