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

WESLEY R. EDWARDS,

a Justice of the Stephentown Town Court, Rensselaer County.

Determination

THE COMMISSION:

Mrs. Gene Robb, Chairwoman
John J. Bower, Esq.
David Bromberg, Esq.
E. Garrett Cleary, Esq.
Dolores DelBello
Victor A. Kovner, Esq.
Honorable William J. Ostrowski
Honorable Isaac Rubin
Honorable Felice K. Shea
John J. Sheehy, Esq.

APPEARANCES:

Gerald Stern (Henry S. Stewart, Of Counsel) for the Commission

Henry F. Zwack for Respondent

The respondent, Wesley R. Edwards, a justice of the Stephentown Town Court, Rensselaer County, was served with a Formal Written Complaint dated August 31, 1984, alleging that he sought special consideration in another court on behalf of his son. Respondent filed an answer dated October 5, 1984.

By order dated October 16, 1984, the Commission designated the Honorable James A. O'Connor as referee to hear and

report proposed findings of fact and conclusions of law. A hearing was held on January 9, 1985, and the referee filed his report with the Commission on May 13, 1985.

By motion dated June 21, 1985, the administrator of the Commission moved to confirm the referee's report and for a finding that respondent be removed from office. Respondent opposed the motion on July 10, 1985.

On July 19, 1985, the Commission heard oral argument, at which respondent and his counsel appeared, and thereafter considered the record of the proceeding and made the following findings of fact.

1. Respondent is a justice of the Stephentown Town Court and has been since January 1964.

2. On June 2, 1980, respondent's son, Gregory A. Edwards, was ticketed for Speeding in the Town of Schuyler, Herkimer County.

3. On June 9, 1980, respondent called Justice Leon J. Cioch of the Schuyler Town Court, identified himself as a judge and said that he was calling on behalf of his son.

4. Respondent asked about the procedure required to resolve the case and told Judge Cioch that Gregory Edwards did not believe that he had been driving at the speed charged.

5. Judge Cioch suggested that Mr. Edwards plead not guilty and send him the ticket. Judge Cioch said that he would

submit the matter to the District Attorney's Office for its recommendation.

6. After the telephone conversation, respondent's son pled not guilty to the Speeding charge on the back of the traffic ticket.

7. Respondent sent the ticket to Judge Cioch with a covering letter dated June 9, 1980.

8. In the letter, respondent typed:

> As per your recommendation, Gregory has entered a plea of 'Not Guilty' to the charge of speeding, violation of section 1180-B of the V&T Law, pursuant to our telephone conversation this date.
>
> Please be advised of the following, Gregory has no prior convictions and his probation period ended on March 18, 1980.
>
> Any assistance you may render will be greatly appreciated by the undersigned.

* * *

9. Respondent then listed his name, judicial title and address and under a space for his signature typed his name and judicial title.

10. Judge Cioch testified at the hearing in this matter that he never received respondent's letter and the defendant's plea.

11. Judge Cioch testified that that on June 16, 1980, he received a telephone call from a person who identified himself as Gregory Edwards and entered a plea of guilty to the Speeding charge.

12. On December 3, 1981, Judge Cioch mailed Mr. Edwards a fine notice.

13. Respondent testified at the hearing that his son never pled guilty by telephone and never received the fine notice.

14. On March 29, 1982, Judge Cioch ordered Mr. Edwards' license suspended for failure to pay the fine.

15. In February 1983, respondent and his son received notice of the suspension order from the Department of Motor Vehicles.

16. Respondent then called Judge Cioch, identified himself as a judge and said that he was calling on behalf of his son.

17. Respondent told Judge Cioch that he was surprised to receive the suspension notice because his son had pled not guilty and had never received a trial date.

18. Respondent asked Judge Cioch to lift the suspension.

19. Judge Cioch told respondent to send the suspension notice to him so that it could be lifted.

20. Respondent thereafter sent the suspension notice to Judge Cioch with a letter dated February 26, 1983, on judicial stationery.

21. In the letter, respondent typed:

> I believe that seeing a plea of 'Not Guilty' was entered on June 9, 1980 and forwarded to your court the same date and due to the time which has elapsed since then (2 years and 8 months) that the information should be dismissed due to the fact that a trial date was not set and the defendant notified of same.
>
> * * *

22. Respondent signed the letter and typed his name, judicial title and address below his signature.

23. Respondent also enclosed a copy of the letter of June 9, 1980, to Judge Cioch.

24. Judge Cioch received the letter and enclosures and ordered the suspension lifted.

25. Judge Cioch then referred the matter to Assistant District Attorney Stephen Getman to allow him to answer respondent's claim that the case should be dismissed.

26. Mr. Getman subsequently recommended that the case be dismissed.

27. Judge Cioch did not dismiss the case because he did not want to create the appearance that he was "doing a favor" or was "being pressured into a dismissal." As of the hearing on January 9, 1985, the matter was still pending in Judge Cioch's court.

28. At the time of each communication with Judge Cioch, respondent was aware of the Commission's decisions and report on the subject of ticket-fixing and knew that it was

improper for one judge to request special consideration from another concerning a pending matter.

29. Respondent maintained that the purpose of his communications to Judge Cioch was to "expedite" his son's case.

30. Upon oral argument, respondent acknowledged, for the first time, that his communications to Judge Cioch resulted from his "paternal instincts" and were improper.

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. The charge in the Formal Written Complaint is sustained, and respondent's misconduct is established.

On four occasions, respondent intervened in a case in another court on behalf of his son. Each time, respondent discussed ex parte the merits of the case and invoked the prestige of his judicial office.

We reject respondent's contention that because he did not specifically ask for a favor, he did not seek special consideration. "...[A]ny 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. ...Judges must assiduously avoid those contacts which might create even the appearance of impropriety." Matter of Lonschein v. State Commission on Judicial Conduct, 50 NY2d 569, 572 (1980).

Respondent identified himself as a judge in two telephone conversations and mentioned his judicial office twice in each of two letters to another judge. The obvious purpose was to seek some favorable action for his son. See Matter of DeLuca, unreported (Com. on Jud. Conduct, July 2, 1984).

Respondent was aware at the time of his son's case that it was wrong to seek special consideration and should have known that his communications to Judge Cioch were improper. Yet he still fails to appreciate his misconduct, demonstrating insensitivity to the ethical obligations of judicial office. Matter of Shilling v. State Commission on Judicial Conduct, 51 NY2d 397, 404 (1980); Matter of Sims v. State Commission on Judicial Conduct, 61 NY2d 349, 356 (1984).

As to appropriate sanction, the law is now clear. In a case involving similar facts, the Court of Appeals recently declared, "Ticket-fixing is misconduct of such gravity as to warrant removal, even if this matter were [the judge's] only transgression." Matter of Reedy v. State Commission on Judicial Conduct, 64 NY2d 299, 486 NYS2d 722, 723 (1985).

Respondent's insistence throughout this proceeding that his communications to his fellow judge were merely for the purpose of expediting his son's case shows a regrettable lack of candor.

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

Mrs. Robb, Mr. Bower, Mr. Bromberg, Mrs. DelBello, Mr. Kovner and Judge Ostrowski concur.

Mr. Cleary, Judge Shea and Mr. Sheehy dissent as to sanction only and vote that respondent be censured.

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: September 18, 1985

Lillemor T. Robb

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

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DISSENTING OPINION BY MR. CLEARY IN WHICH JUDGE SHEA AND MR. SHEEHY JOIN

In his 21 years as town justice, respondent has never before been the subject of Commission discipline. He cooperated fully during the investigation of this matter and has been forthright in admitting the impropriety of his conduct.

I cannot agree that the sanction of removal is necessary. Removal is an extreme sanction which should be applied only in the event of truly egregious circumstances. Matter of Steinberg v. State Commission on Judicial Conduct, 51 NY2d 74, 83. While the Court of Appeals held in Matter of Reedy v. State Commission on Judicial Conduct, 64 NY2d 299, 302, that a single incident of ticket-fixing warrants removal, in Reedy there had been a prior censure. The Court of Appeals has also ruled in Matter of Cunningham v. State Commission on Judicial Conduct, 57 NY2d 270, 275, 456 NYS2d 36, 38, that removal should not be ordered for conduct that amounts simply to poor judgment or even extremely poor judgment. Such is the case here, where respondent's judgment was clouded by his son's involvement. In

light of respondent's 21 unblemished years as a town justice, this isolated incidence of extremely poor judgment stands out as an aberration. I feel the appropriate sanction is censure.

Dated: September 18, 1985

E. Garrett Cleary, Esq., Member
New York State Commission
on Judicial Conduct