

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

GERALD GASSMAN,

a Justice of the Mansfield Town Court,
Cattaraugus County.

THE COMMISSION:

Mrs. Gene Robb, Chairwoman
John J. Bower, Esq.
David Bromberg, Esq.
Honorable Carmen Beauchamp Ciparick
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 (John J. Postel, Of Counsel) for the
Commission

Honorable Gerald Gassman, pro se

The respondent, Gerald Gassman, a justice of the
Mansfield Town Court, Cattaraugus County, was served with a
Formal Written Complaint dated April 10, 1985, alleging that,
based on an ex parte communication from another judge,
respondent released three defendants he had previously jailed in

lieu of bail. Respondent answered the Formal Written Complaint by letter of April 29, 1985.

By order dated May 17, 1985, the Commission designated Richard D. Parsons, Esq., as referee to hear and report proposed findings of fact and conclusions of law. A hearing was held on July 30, 1985, and the referee filed his report with the Commission on December 13, 1985.

By motion dated January 16, 1986, the administrator of the Commission moved to confirm the referee's report and for a finding that respondent be admonished. Respondent replied to the motion in an undated letter received on January 31, 1986. Respondent waived oral argument.

On February 14, 1986, the Commission heard oral argument by the administrator and thereafter considered the record of the proceeding and made the following findings of fact.

1. Respondent is a part-time justice of the Mansfield Town Court and has been for 15 years.

2. Respondent is not an attorney; he is a self-employed building contractor and farmer.

3. Respondent has attended training sessions required by the Office of Court Administration for non-lawyer judges. He is familiar with the annual reports of the Commission and its investigations and decisions on ticket-fixing.

4. On November 22, 1983, John Gross, Jr., John Holer, George Anderson and Aubrey Swanson were arrested in the Town of Mansfield on charges of Unlawfully Taking Deer With Antlers Less Than Three Inches and Taking Deer With The Aid Of An Artificial Light, both misdemeanors under the Environmental Conservation Law.

5. The four defendants were arraigned before respondent in the early morning of November 23, 1983.

6. Respondent adjourned the cases and remanded Mr. Gross, Mr. Holer and Mr. Anderson to the Cattaraugus County Jail in lieu of \$2,000 bail each. Mr. Swanson was released on his own recognizance.

7. At 3:26 A.M. on November 23, 1983, Frank R. Bayger, a justice of the Supreme Court, Eighth Judicial District, called the Cattaraugus County Jail and spoke to Deputy Sidney Lindell, Jr.

8. Judge Bayger identified himself by name and judicial title and asked whether Mr. Gross, Mr. Holer and Mr. Anderson were being held at the jail.

9. After Deputy Lindell confirmed that the three defendants were in jail, Judge Bayger indicated that he knew the men, could vouch for them and asked that they be released.

10. Deputy Lindell referred Judge Bayger to respondent and the district attorney, Levant Himelein.

11. At about 4:00 A.M., Judge Bayger called respondent, identified himself as Frank Bayger and asked whether respondent could help him obtain the release of the three defendants.

12. Judge Bayger told respondent that he knew the men, that they were responsible businessmen and citizens and that he could promise that if they were released, they would return with bail by noon.

13. During the telephone conversation, Judge Bayger told respondent that he had "done some work in the Supreme Court business," and respondent concluded that he was a Supreme Court Justice.

14. Respondent understood that Judge Bayger was attempting to influence respondent's decision in order to obtain the release of the three defendants.

15. As the result of the call from Judge Bayger, respondent called the jail and asked that the defendants be released. At about 7:00 A.M., respondent delivered an order releasing the three men from custody.

16. Respondent did not notify the arresting officer or the district attorney before changing his earlier bail decision.

17. Respondent did not report the call from Judge Bayger to any administrative authority or to the Commission.

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(c), 100.3(a)(4) and 100.3(b)(3) of the Rules Governing Judicial Conduct and Canons 1, 2A, 2B, 3A(4) and 3B(3) of the Code of Judicial Conduct. The charge in the Formal Written Complaint is sustained, and respondent's misconduct is established.

Respondent considered an ex parte communication from another judge which was clearly designed and understood by respondent as an attempt to influence his decision as to bail. Because the defendants knew a Supreme Court Justice and were able to get him to improperly intervene on their behalf, they were able to obtain their release.

Such favoritism, even when it is not designed to affect the final disposition of a case, impairs public confidence in the integrity and impartiality of the judiciary and has been repeatedly condemned by the courts and this Commission. Matter of Lonschein v. State Commission on Judicial Conduct, 50 NY2d 569 (1980); Matter of Kaplan, 3 Commission Determinations 229 (May 17, 1983); Matter of Calabretta, unreported (Com. on Jud. Conduct, Apr. 11, 1984); Matter of Hansel L. McGee, unreported (Com. on Jud. Conduct, Apr. 12, 1984). Moreover, respondent's failure to report Judge Bayger's blatant misconduct in seeking special consideration for his

friends violated Section 100.3(b) (3) of the Rules Governing Judicial Conduct.

Two factors must be considered in mitigation. Respondent has acknowledged his misconduct and cooperated in the investigation of the matter. Matter of Kelso v. State Commission on Judicial Conduct, 61 NY2d 82 (1984); Matter of Calabretta, supra. Respondent otherwise enjoys a reputation as a fair and conscientious judge. Matter of Doolittle, unreported (Com. on Jud. Conduct, June 13, 1985).

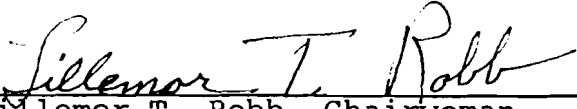
By reason of the foregoing, the Commission determines that the appropriate sanction is admonition.

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: March 25, 1986



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