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

EDWARD J. KILEY,

a Judge of the District Court,
Suffolk County.

THE COMMISSION:

Mrs. Gene Robb, Chairwoman
Honorable Myriam J. Altman
Henry T. Berger, Esq.
John J. Bower, Esq.
Honorable Carmen Beauchamp Ciparick
E. Garrett Cleary, Esq.
Dolores Del Bello
Victor A. Kovner, Esq.
Honorable William J. Ostrowski*
Honorable Isaac Rubin
John J. Sheehy, Esq.

APPEARANCES:

Gerald Stern (Robert H. Tembeckjian, Of Counsel) for the Commission

Nathan R. Sobel for Respondent

---

*Judge Ostrowski's term expired on March 31, 1989. The vote in this matter was on February 17, 1989. The Honorable Eugene W. Salisbury was appointed to the Commission for a term commencing April 1, 1989.

The respondent, Edward J. Kiley, a judge of the District Court, Suffolk County, was served with a Formal Written Complaint dated May 10, 1988, alleging that he interceded on behalf of defendants in two cases and that he gave testimony that was lacking in candor. Respondent filed an answer dated June 8, 1988.

By order dated June 17, 1988, the Commission designated J. Kenneth Campbell, Esq., as referee to hear and report proposed findings of fact and conclusions of law. A hearing was held on September 14 and 16, 1988, and the referee filed his report with the Commission on December 5, 1988.

By motion dated December 23, 1988, the administrator of the Commission moved to confirm in part and disaffirm in part the referee's report, to adopt additional findings and conclusions and for a finding that respondent be removed from office. Respondent opposed the motion by cross motion on February 6, 1989. The administrator filed a reply on February 8, 1989.

On February 17, 1989, 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.

As to Charge I of the Formal Written Complaint:

1. Respondent has been a judge of the Suffolk County District Court since January 27, 1983.

2. Respondent has known John Hopkins, Sr., and members of his family personally and professionally for more than ten years. As a practicing lawyer before he took the bench, respondent had represented Mr. Hopkins and members of his family, including a son, John Hopkins, Jr.

3. At about 6:00 A.M. on October 29, 1987, the senior Mr. Hopkins called respondent at home and told him that John Hopkins, Jr., had been arrested for armed robbery and asked for the name of a lawyer who had previously represented the family. Respondent gave the senior Mr. Hopkins the name of the attorney. Respondent was aware that many tragedies had recently befallen the family. He told Mr. Hopkins that later that morning he would be in the courthouse where the son was to be arraigned.

4. Mr. Hopkins came to respondent's courtroom later that morning. Respondent met with him in chambers and consoled him. He also met with Mr. Hopkins' wife in a courthouse hallway and consoled her.

5. Respondent attempted to look for the attorney whom he believed would be representing the junior Mr. Hopkins but was unable to find him.

6. Respondent then approached Assistant District Attorney Ira S. Rosenberg, who was handling the arraignment part, and asked to speak to him.

7. Respondent led Mr. Rosenberg from the courtroom to a loading dock. He told Mr. Rosenberg that he had represented the junior Mr. Hopkins in the past and that Mr. Hopkins had a good record of appearing in court when he was scheduled to do so. Respondent also told Mr. Rosenberg about the recent tragedies in the Hopkins family and that the defendant had a drinking problem.

8. Respondent then approached Judge Joseph F. Klein, who was scheduled to preside at the arraignment part that day. He told Judge Klein that he had previously represented the junior Mr. Hopkins and that he had a good record of appearing in court when he was scheduled to do so. Respondent also told Judge Klein of the defendant's drinking problem and of the family's problems.

9. Respondent then rejoined Mr. and Mrs. Hopkins in the hallway and met their attorney, Terry J. Karl. He then returned to his own courtroom.

10. The junior Mr. Hopkins was arraigned before Judge Klein later that day. Mr. Rosenberg asked that bail be set at $10,000. Judge Klein set bail at $500.

As to Charge II of the Formal Written Complaint:

11. On February 22, 1988, in connection with a duly-authorized investigation, respondent testified before a member of the Commission with respect to his conduct in connection with the Hopkins case.

12. Upon questioning by a staff attorney, respondent persistently testified, as indicated in paragraphs 6(h), 6(j) and 6(k) of Charge II of the Formal Written Complaint and the specifications thereto, that he spoke to Mr. Rosenberg and Judge Klein only for the purpose of providing them with information relevant to the question of bail. Respondent denied that his purpose in speaking to Judge Klein was to seek to have low bail imposed in the Hopkins case. In so testifying, respondent was evasive and less than forthcoming, and his testimony was lacking in candor.

13. Paragraphs 6(a) through 6(g) and 6(i) of Charge II of the Formal Written Complaint are not sustained and are, therefore, dismissed.

As to Charge III of the Formal Written Complaint:

14. On October 17, 1987, respondent, a former New York City police officer, attended a reunion of officers from a Brooklyn precinct. Vincent James Laudani, another former officer and a long-time friend of respondent, told respondent

that another officer by the name of Begg was concerned about a case in respondent's court involving Mr. Begg's son. Respondent did not know Mr. Begg.

15. Several days later, respondent inquired in court about the case and learned that it was scheduled to come before him. Between October 19 and 23, 1987, respondent examined the file of People v. Matthew M. Begg and learned that the defendant, who was about 17 or 18 years old, was charged with criminal trespass on the grounds of the abandoned Edgewood State Hospital.

16. On November 12, 1987, the case came before respondent. The People were represented by John H. Rouse. Jacqueline Lupichuk appeared for Mr. Begg and asked for a trial date.

17. Respondent called Mr. Rouse into chambers and asked him why he was not offering to dispose of the case with an Adjournment in Contemplation of Dismissal (ACD).

18. Mr. Rouse explained that his office had a policy not to offer ACDs on trespass cases at Edgewood because there had been repeated problems with youths on the property.

19. Respondent then asked Mr. Rouse to summon his supervisor, Marcie I. Rudner, to the courtroom. When Ms. Rudner arrived, respondent returned to chambers with her and Mr. Rouse.

20. Respondent told the prosecutors that he would like an ACD in the Begg case. He said that the defendant's father

was a police officer with whom respondent had once worked and that an ACD would be "appreciated."

21. Ms. Rudner said that an ACD would not be possible, repeating Mr. Rouse's explanation for the policy.

22. Respondent, Ms. Rudner and Mr. Rouse then returned to the courtroom. Respondent put on the record that he had discussed the case "with the view that there might be a possible ACD disposition." Ms. Rudner put her position on the record. Respondent scheduled the matter for trial before another judge.

23. Respondent did not disqualify himself or offer to disqualify himself from the Begg case. He did not disclose on the record that he had had a conversation with a friend concerning the case.

As to Charge IV of the Formal Written Complaint:

24. The charge is not sustained and is, therefore, dismissed.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 100.1, 100.2, 100.3(a)(1), 100.3(a)(4), 100.3(c)(1) and 100.3(c)(1)(i) of the Rules Governing Judicial Conduct and Canons 1, 2, 3A(1), 3A(4), 3C(1) and 3C(1)(a) of the Code of Judicial Conduct. Charges I and III and paragraphs 6(h), 6(j) and 6(k) of Charge II of the Formal Written Complaint are

sustained insofar as they are consistent with the findings herein, and respondent's misconduct is established. Paragraphs 6(a) through 6(g) and 6(i) of Charge II and Charge IV are dismissed.

In the Hopkins case, respondent approached the prosecutor and the presiding judge and offered information which was clearly designed to influence their decisions as to bail. Although it cannot be demonstrated that he specifically asked the prosecutor to recommend low bail or asked the judge to set low bail, that does not excuse the conduct. He spoke of the defendant's good record for appearing in court in the past. That argument could only have had one purpose: to cast favor on the defendant as a bail risk. See Matter of DeLuca, 1985 Annual Report 119 (Com. on Jud. Conduct, July 2, 1984).

Respondent knew or should have known that the prosecutor and the other judge would "regard his words and actions with heightened deference simply because he is a Judge." Matter of Steinberg v. State Commission on Judicial Conduct, 51 NY2d 74, 81 (1980). Such requests are cause for discipline. Matter of McGee, 1985 Annual Report 176 (Com. on Jud. Conduct, Apr. 12, 1984).

In addition, respondent failed to disqualify himself and asked the prosecutors ex parte for a favorable disposition in the Begg case. Having received an inquiry on behalf of the

defendant, respondent should have disqualified himself upon learning that Begg was before him. Section 100.3(c)(1)(i) of the Rules Governing Judicial Conduct. His ex parte requests of the prosecutors for an ACD were plain attempts to gain special consideration, which is "wrong and always has been wrong." Matter of Byrne, 47 NY2d (b) (Ct. on the Judiciary 1979). See also Matter of Seiffert v. State Commission on Judicial Conduct, 65 NY2d 278 (1985).

This serious misconduct is exacerbated by respondent's failure to recognize that what he did was wrong (see Matter of Sims v. State Commission on Judicial Conduct, 61 NY2d 349, 356 [1984]; Matter of Shilling v. State Commission on Judicial Conduct, 51 NY2d 397, 404 [1980]), and by his evasive testimony about the Hopkins case. "Devious answers in disciplinary proceedings are viewed as proffered for lack of legitimate explanation and as compounding the weight of the charge in question." Matter of Waltemade, 37 NY2d (a), (nn), (hhh) (Ct. on the Judiciary 1975).

If we were confronted only with respondent's conduct in the Hopkins case, serious consideration would have to be given to a sanction less than removal. For there, respondent's judgment was arguably impaired by knowledge of the tragic circumstances in which his friends found themselves. See Matter of Figueroa, 1980 Annual Report 159, 161 (Com. on Jud. Conduct, Nov. 1, 1979). But the impaired judgment was not limited to the case of close friends. Respondent was not acquainted with the

Begg family except for casual reference to a case by an old friend. Respondent's conduct in Begg makes it clear that he has no compunction about using the entire power of his office to benefit another. Taken as a whole, respondent's conduct indicates insensitivity to the ethical standards of judicial office and demonstrates that he is not fit to be a judge.

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

Mrs. Robb, Judge Altman, Mr. Berger, Judge Ciparick, Mr. Cleary, Mrs. Del Bello, Mr. Kovner, Judge Ostrowski and Judge Rubin concur, except that Mrs. Del Bello dissents as to Charges II and IV only and votes that the charges be sustained in toto.

Mr. Bower and Mr. Sheehy were 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: April 3, 1989

Lillemor T. Robb

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

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

EDWARD J. KILEY,

a Judge of the District Court, Suffolk County.

OPINION BY MRS. DEL BELLO, DISSENTING IN PART

I concur that Charges I and III are sustained and that respondent should be removed from office. I write separately because I feel that the findings of the majority of the Commission do not go far enough with respect to respondent's lack of candor. Accordingly, I would sustain in toto Charges II and IV of the Formal Written Complaint.

With respect to the Hopkins case, respondent testified unequivocally in this proceeding that he went looking for the prosecutor, Mr. Rosenberg, and the presiding magistrate, Judge Klein, because Mr. Hopkins' attorney was not available and because respondent wanted to convey certain information which he felt would be relevant to their "independent" judgments concerning bail. Respondent insisted that he had no recollection of discussing with Mr. Rosenberg the amount of his bail recommendation or of asking him whether he could "do better" than a $10,000 bail recommendation, as Mr. Rosenberg testified.

The defense counsel, Mr. Karl, on the other hand, clearly recalled that respondent asked him what judge would be presiding over the Hopkins arraignment, indicating that respondent spoke to Mr. Karl before his sequential conversations with Mr. Rosenberg and Judge Klein. If Mr. Karl's version of the events is accepted, it becomes obvious that repondent's intent in talking to the prosecutor and Judge Klein was not, as he maintains, to present information that would properly have been put forth by Mr. Karl, but to lend the prestige of judicial office to the defendant's case for low bail.

Thus, it is apparent that respondent's version of his conversation with Mr. Karl and his failure to recall discussing bail with Mr. Rosenberg serves his own position that he was not seeking favoritism for the Hopkins family. The testimony of Mr. Karl and Mr. Rosenberg carries no such taint.

The referee found that the difference on these points between the attorneys and respondent was attributable to an honest difference in recollection, and the majority of the Commission adopted this view. I cannot agree. Respondent's first testimony was less than four months after the events in Hopkins. He was close to the family, and the incident was an emotional one. It was not routine and must have been memorable. Respondent recounted many insignificant details of his conversations that day and meticulously retraced his steps. He failed to recall events and testified at variance with other

witnesses only when their version of the facts tended to incriminate him. It is no wonder that the referee found that respondent's testimony was "evasive and less than forthcoming." That sounds like lack of candor to me.

For these reasons, I would reject respondent's testimony concerning his conduct in the Hopkins case and would find that he was deliberately untruthful concerning his conversations with Mr. Karl and Mr. Rosenberg, as well as evasive about his reasons for speaking to the prosecutor and Judge Klein.

With respect to the Begg case, the referee and the majority reject respondent's testimony and adopt the facts as presented by other witnesses. Yet the majority does not sustain Charge IV, which alleged that respondent lacked candor in his testimony about the case. I find this to be a contradiction.

Respondent's position is that when the Begg case came before him, he had no recollection that he had spoken to a friend about it less than a month before, despite the fact that he knew the name of the defendant, had examined the case file only three weeks before, knew about the facts of the crime alleged and knew that the case was to come before him. Only after he had asked the prosecutors, Mr. Rouse and Ms. Rudner, to agree to dismiss the case without trial did he recall that the Begg case was the one in which his friend had an interest, respondent claimed. If this version of the events were accepted, it would have to be found that respondent's requests were based on the merits, not on favoritism, since at the time

he made the requests he did not know of his personal interest in the case.

The majority rightfully rejects this contrived scenario and adopts facts as recounted by the prosecutors. Yet the majority also holds that respondent's unequivocal and self-serving testimony was the result only of a faulty memory.

I conclude that the preponderance of the evidence, as well as respondent's personal appearance at oral argument, clearly indicate that respondent repeatedly fabricated events to mitigate his misconduct in connection with these two matters. Such lack of candor is antithetical to the role of a judge who is sworn to uphold the law and seek the truth. Matter of Myers v. State Commission on Judicial Conduct, 67 NY2d 550, 554 (1986).

Accordingly, I vote to sustain in toto Charges II and IV, as well as Charges I and III, and concur that respondent should be removed from office.

Dated: April 3, 1989

Dolores Del Bello

Dolores Del Bello, Member
New York State
Commission on Judicial Conduct