

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

LEONARD J. LITZ,

a Judge of the Family Court,
Schenectady County.

Determination

BEFORE: Mrs. Gene Robb, Chairwoman
Honorable Fritz W. Alexander, II
Honorable Richard J. Cardamone
Dolores DelBello
Michael M. Kirsch, Esq.
Victor A. Kovner, Esq.
William V. Maggipinto, Esq.
Honorable Felice K. Shea
Carroll L. Wainwright, Jr., Esq.

APPEARANCES:

Gerald Stern (Jack J. Pivar, Of Counsel)
for the Commission

Frank J. Litz for Respondent

The respondent, Leonard J. Litz, a judge of the Family Court, Schenectady County, was served with a Formal Written Complaint dated March 27, 1979, alleging impropriety in three traffic cases. Respondent filed an answer dated April 16, 1979.

By order dated June 18, 1979, the Commission designated the Honorable Raymond Reisler as referee to hear and report proposed findings of fact and conclusions of law. The hearing was conducted on November 28, 1979, and the report of the referee was filed on July 7, 1980.

By motion dated September 24, 1980, the administrator of the Commission moved to confirm the report of the referee and for a determination that respondent be censured. Respondent opposed the motion on October 10, 1980, and cross-moved for dismissal of the Formal Written Complaint.

The Commission heard oral argument on the motions on October 31, 1980, thereafter considered the record of this proceeding and now makes the following findings of fact.

1. On March 12, 1975, respondent sent a letter to Justice Richard A. Lips of the Town Court of Clifton Park, confirming a previous telephone conversation and seeking special consideration on behalf of the defendant, who was charged with speeding, in People v. Robert M. Valletta, a case then pending before Judge Lips. The defendant is respondent's nephew.

2. On January 15, 1976, respondent communicated with Justice Edward J. Longo of the Town Court of Rotterdam, seeking special consideration on behalf of the defendant, who was charged with speeding, in People v. John F. Carlson, a case then pending before Judge Longo. At the time the defendant was respondent's prospective son-in-law.

3. On April 18, 1974, respondent communicated with Justice Edward J. Longo of the Town Court of Rotterdam, seeking special consideration on behalf of the defendant, who was charged with speeding, in People v. John P. Grecco, a case then pending before Judge Longo. The defendant is respondent's brother-in-law.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 33.1, 33.2, 33.3(a)(1) and 33.3(a)(4) of the Rules Governing Judicial Conduct and Canons 1, 2 and 3A of the Code of Judicial Conduct. Charges I through III of the Formal Written Complaint are sustained, and respondent's misconduct is established.

It is improper for a judge to seek to persuade another judge, on the basis of personal or other special influence, to alter or dismiss a traffic ticket. A judge who accedes to such a request is guilty of favoritism, as is the judge who made the request. By making ex parte requests of other judges for favorable dispositions for defendants in traffic cases, respondent violated the Rules enumerated above, which read in part as follows:

Every judge...shall himself observe, high standards of conduct so that the integrity and independence of the judiciary may be preserved. [Section 33.1]

A judge shall respect and comply with the law and shall conduct himself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary. [Section 33.2(a)]

No judge shall allow his family, social or other relationship to influence his judicial conduct or judgment. [Section 33.2(b)]

No judge...shall convey or permit others to convey the impression that they are in a special position to influence him... [Section 33.2(c)]

A judge shall be faithful to the law and maintain professional competence in it... [Section 33.3(a)(1)]

A judge shall...except as authorized by law, neither initiate nor consider ex parte or other communications concerning a pending or impending proceedings... [Section 33.3(a)(4)]

Courts in this and other states, as well as the Commission, have found that favoritism is serious judicial misconduct and that ticket-fixing is a form of favoritism.

In Matter of Byrne, 47 NY2d(b) (Ct. on the Judiciary 1979), the court declared that a "judicial officer who accords or requests special treatment or favoritism to a defendant in his court or another judge's court is guilty of malum in se misconduct constituting cause for discipline." In that case, ticket-fixing was equated with favoritism, which the court stated was wrong and has always been wrong." Id. at (c).

Respondent, as the judge of a court of record and one who is trained in the law, must be particularly sensitive to the ethical standards applicable to a judge. His argument before the Commission that there was no special consideration demonstrated in his communications on behalf of relatives is unpersuasive. It evinces a basic failure to recognize the nature of his misconduct. Requests for favored treatment on behalf of any defendants are improper. Such requests on behalf of relatives are especially offensive to the standards of judicial conduct.

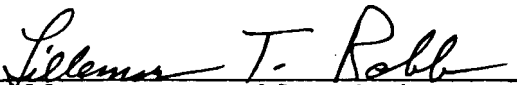
By reason of the foregoing, the Commission determines that the appropriate sanction is censure.

All concur except for Judge Cardamone and Mr. Kirsch, who dissent in a separate opinion only with respect to sanction and vote that the appropriate sanction is admonition.

CERTIFICATION

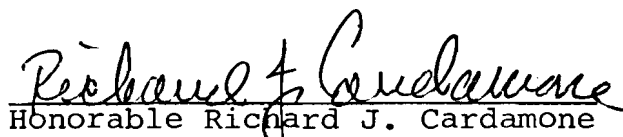
It is certified that the foregoing is the determination of the State Commission on Judicial Conduct, containing the findings of fact and conclusions of law required by Section 44, subdivision 7, of the Judiciary Law.


Dated: January 6, 1981
Albany, New York


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

Judge Cardamone and Mr. Kirsch dissent in the following opinion.

Censure is too harsh for the misconduct here found. In view of respondent's otherwise unblemished record, we believe admonition to be a more appropriate sanction.


Honorable Richard J. Cardamone
Member, State Commission on
Judicial Conduct


Michael M. Kirsch, Esq.
Member, State Commission on
Judicial Conduct