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

GREGORY R. MANNING,

a Justice of the Riverhead Town Court, Suffolk 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 (Alan W. Friedberg, Of Counsel) for the Commission

Sussman & Gottlieb (By Robert C. Gottlieb; Debra E. Jenkins, Of Counsel) for Respondent

The respondent, Gregory R. Manning, a justice of the Riverhead Town Court, Suffolk County, was served with a Formal Written Complaint dated October 22, 1985, alleging, inter alia, that he sought special consideration and had ex parte meetings in two cases. Respondent filed an answer dated November 20, 1985.

By order dated December 4, 1985, the Commission designated Bernard H. Goldstein, Esq., as referee to hear and report proposed findings of fact and conclusions of law. A hearing was held on January 28, 1986, and the referee filed his report with the Commission on April 22, 1986.

By motion dated May 21, 1986, 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 censured. Respondent opposed the motion on May 30, 1986.

On June 19, 1986, the Commission heard oral argument, at which respondent appeared by counsel, and thereafter considered the record of the proceeding and made the following findings of fact.

Preliminary finding:

1. Respondent is a justice of the Riverhead Town Court and has been since 1973.

As to Charge I of the Formal Written Complaint:

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

As to Charge II of the Formal Written Complaint:

3. On December 15, 1984, Donald S. Ceckowski was arrested on a charge of Petit Larceny in the Town of Riverhead.

4. Mr. Ceckowski was arraigned before respondent on December 17, 1984.

5. Respondent and Mr. Ceckowski's parents are members of the same fraternal organization and veterans' organization. Respondent had visited the Ceckowski home in the summer of 1984 and was asked to "christen" the family's new camper.

6. About a week after his arraignment, Donald Ceckowski visited respondent's home. He reminded respondent of the case and told respondent that he knew Mr. Ceckowski's parents.

7. Mr. Ceckowski told respondent the facts surrounding his arrest, indicated that he was embarrassed by the incident and said that he could not afford to hire a lawyer.

8. Respondent told Mr. Ceckowski that Petit Larceny carries a maximum sentence of one year in jail and that he should have a lawyer to defend him.

9. Respondent assured Mr. Ceckowski that he would speak to the prosecutor in the case and get him to talk to Mr. Ceckowski so that he would not have to retain an attorney.

10. Respondent knew at the time of his conversation with Mr. Ceckowski that it was improper for a judge to discuss the merits of a pending case with one party to the dispute outside the presence of the other party.

11. On January 22, 1985, respondent spoke to the prosecutor, Thomas Zayrrhuka, in hopes of sparing Mr. Ceckowski the

expense of an attorney and expecting that the prosecutor would offer to reduce the charge to Disorderly Conduct.

12. Respondent told Mr. Zayrrhuka that he knew Mr. Ceckowski's parents and that they were "nice people."

13. Respondent told Mr. Zayrrhuka that Mr. Ceckowski had visited respondent's home.

14. Respondent asked Mr. Zayrrhuka to talk to Mr. Ceckowski "and work something out without him getting an attorney."

15. Mr. Zayrrhuka offered to consent to an Adjournment in Contemplation of Dismissal.

16. Although an ACD was an unusual disposition in his court for such a case, respondent agreed and adjourned the matter for six months.

17. The case was dismissed on July 22, 1985.

As to Charge III of the Formal Written Complaint:

18. 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) and 100.3(c)(1) of the Rules Governing Judicial Conduct and Canons 1, 2, 3A(1), 3A(4) and 3C(1) of the Code of Judicial Conduct. Charge II of the Formal Written

Complaint is sustained, and respondent's misconduct is established. Charges I and III are dismissed.

By his conduct, respondent created the impression that because of the relationship between respondent and the defendant's parents, Mr. Ceckowski was able to obtain a disposition unavailable to others before the court. Respondent met privately with Mr. Ceckowski and discussed the merits of the case. He then talked to the prosecutor on behalf of the defendant. Respondent failed to disqualify himself after these two improper contacts and granted a disposition that he acknowledges was unusual in his court for such cases.

> [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.
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> Matter of Lonschein v. State Commission on Judicial Conduct, 50 NY2d 569, 572 (1980).

That respondent's disposition was recommended and consented to by the prosecutor after respondent spoke to him on behalf of the defendant in no way mitigates the misconduct. Matter of Morrison, 2 Commission Determinations 261 (Dec. 2, 1980).

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

Mrs. Robb, Mr. Bromberg, Mr. Cleary, Mr. Kovner, Judge Ostrowski, Judge Rubin and Mr. Sheehey concur.

Mr. Bower dissents as to Charges I and III and votes that the charges be sustained and dissents as to sanction and votes that respondent be censured.

Judge Ciparick and Judge Shea concur as to sanction but dissent as to Charge I and vote that the charge be sustained.

Mrs. DelBello concurs as to sanction but dissents as to Charges I and III and votes that the charges be sustained.

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: August 15, 1986

Lillemor T. Robb

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

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GREGORY R. MANNING,

DISSENTING OPINION BY MR. BOWER

a Justice of the Riverhead Town Court, Suffolk County.

I dissent with respect to Charge III.

Respondent dismissed a number of motor vehicle cases in which the defendants have been charged with Driving While Ability Impaired. He dismissed them as a matter of his "policy." He alleges that he dismissed them wholesale since when a motorist is stopped because of weaving or driving erratically, he should have been arrested pursuant to Driving While Intoxicated irrespective of what the breathalyzer test result was. (This is regardless of the fact that the police do not charge the defendants with either Driving While Intoxicated or Driving While Ability Impaired until after the results of the breathalyzer test are obtained.) According to the respondent, if the results of the breathalyzer tests show that pursuant to Section 1195 of the Vehicle and Traffic Law, the defendant's ability was impaired rather than that he was intoxicated, the police should charge him with Driving While Intoxicated; otherwise respondent will dismiss tickets issued for Driving While Ability Impaired.

The tortured and woefully wrong interpretation of the statute is but whimsy. In fact, respondent dismissed these charges because he lacked the competence to read or understand the statutes involved. When it was pointed out to him that the statutory scheme with respect to charging a defendant with either Driving While Intoxicated or Driving While Ability Impaired is totally contrary to what he had supposed it to be, respondent, as others of limited intelligence are wont to do, became offended rather than grateful for having his error pointed out to him. The Referee concluded "that there was no misconduct as respondent acted on his conviction that he was properly interpreting the law." This, in spite of the fact that a simple reading of the pertinent sections would immediately lead one to the conclusion that there was no rational basis, either in logic or law, for respondent's position. At the argument of this case before the Commission, respondent's lawyers, in their affidavit in opposition, conceded that the respondent's policy was wrong. Yet, in spite of this additional concession, the majority agreed with the Referee, supposedly on the theory that an honest mistake of the law does not constitute misconduct. Quite to the contrary, there is a point where incompetence itself in a judge becomes actionable misconduct. This case is an example. There is simply no way that one could, in good conscience, agree with respondent's dismissing charges against alcoholic drivers. To release them under the bizarre theory employed by respondent and to enable them to play Russian Roulette with the lives of others on the highway, is an insult to the fair administration of justice.

It is observed that respondent is not a lawyer. That did not deter him from seeking judicial office. Having attained it, he should avail himself of learning and advice by those schooled in the law and law enforcement. Here, without inquiring any further, respondent petulantly chose to disregard the legal advice given to him by the District Attorney and the proper interpretation of the law offered by the police captain. There were innumerable avenues of finding out if respondent's tortured interpretation of the Vehicle and Traffic Law was anything more than an aberration. He chose none. Instead, having been charged, he now asserts his incompetence not as a shield but as a sword. It grieves me that he asserted it successfully.

Charge III should be sustained and respondent should be censured.

Dated: August 15, 1986

John J. Bower, Esq., Member
New York State
Commission on Judicial Conduct