

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

HANSEL L. MCGEE,

a Judge of the Civil Court of the City
of New York, Bronx County.

Determination

THE COMMISSION:

Mrs. Gene Robb, Chairwoman*
Honorable Fritz W. Alexander, II
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 (Robert Straus, Of Counsel) for
the Commission

Murray Richman for Respondent

The respondent, Hansel L. McGee, a judge of the New York City Civil Court, was served with a Formal Written Complaint dated June 14, 1983, alleging that he had interceded on behalf of a relative in a case pending before another judge. Respondent filed an answer dated June 29, 1983.

*Mrs. Robb's term as a member of the Commission expired on March 31, 1984. This determination was rendered pursuant to a vote on February 10, 1984.

By order dated July 8, 1983, the Commission designated Robert L. Ellis, Esq., as referee to hear and report proposed findings of fact and conclusions of law. The hearing was held on September 22, 1983, and the referee filed his report with the Commission on November 15, 1983.

By motion dated December 6, 1983, the administrator of the Commission moved to confirm the referee's report and for a determination that respondent be censured. Respondent opposed the motion by cross-motion on December 15, 1983. Oral argument was waived.

The Commission considered the record of the proceeding on February 10, 1984, and made the following findings of fact.

1. Respondent is a judge of the New York City Civil Court and has been since January 1, 1982.

2. On December 17, 1982, respondent's nephew was arrested on a criminal charge.

3. That evening, respondent went to the courthouse where his nephew was to be arraigned. Respondent and the nephew's father retained an attorney at the courthouse to represent the nephew.

4. Respondent entered the courtroom and asked where he could find the presiding judge. He was directed to the robing room

of Judge Irene J. Duffy of the New York City Family Court, who was assigned to criminal arraignments on December 17, 1982.

5. Respondent went to Judge Duffy's robing room and introduced himself as a judge.

6. Respondent told Judge Duffy that his nephew had been arrested and was to be arraigned that evening.

7. Judge Duffy told respondent that she could not speak to him concerning the matter and asked him to leave. She referred him to the prosecutor.

8. Respondent told Judge Duffy that his nephew had recently finished law school and indicated that he was angry with the nephew for getting into trouble.

9. Respondent said to Judge Duffy, "I hope that you set low bail," and left the robing room.

10. Respondent returned to the courtroom and approached an assistant district attorney, Steven Milligram.

11. Respondent introduced himself as a judge of the Civil Court and asked Mr. Milligram to recommend either release or low bail for his nephew.

12. Mr. Milligram told respondent that he could not discuss the case with a member of the defendant's family.

13. Mr. Milligram then asked another assistant district attorney to handle the nephew's case so that it would not appear

that the prosecutor's recommendation for bail or release was based on respondent's request.

14. Respondent took a seat in the courtroom and watched the arraignment of his nephew and his two co-defendants by Judge Duffy.

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(b), 100.2(c) and 100.3(a)(4) of the Rules Governing Judicial Conduct and Canons 1, 2A, 2B and 3A(4) of the Code of Judicial Conduct. The charge in the Formal Written Complaint is sustained, and respondent's misconduct is established. Respondent's cross-motion is denied.

Respondent used the prestige of his office to attempt to benefit his nephew by influencing Judge Duffy's decision as to bail, first by approaching the judge herself and then by appealing to the prosecutor to recommend low bail or release. In both conversations, respondent plainly thought that his position as a judge could obtain special treatment for his nephew. Such a solicitation of favoritism "is wrong, and always has been wrong;" it is malum in se misconduct. Matter of Byrne, 420 NYS2d 70, 71, 72 (1979).

See, also, Matter of Lonschein, 50 NY2d 569 (1980); Matter of Shilling, 51 NY2d 397 (1980); Matter of Montaneli, unreported (Com. on Jud. Conduct, Sept. 10, 1982); Matter of Kaplan, NYLJ May 20, 1983, p. 7, col. 1 (Com. on Jud. Conduct, May 17, 1983).

Respondent's contentions that he approached Judge Duffy and the prosecutor only to ascertain the amount of bail "lack the ring of truth." Matter of Steinberg, 51 NY2d 74, 81 (1980). Judge Duffy and Mr. Milligram, neither of whom have a motive to misrepresent the facts, swear otherwise. Had that been the true objective, respondent's purported purpose would have been more appropriately undertaken by his nephew's attorney, whom respondent had helped to engage. Furthermore, there was no rational reason to believe that the amount of bail could have been ascertained before arraignment, since the determination of bail is one of the chief purposes of the arraignment.

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

Mrs. Robb, Mr. Bower, Mr. Bromberg, Mr. Cleary, Mrs. DelBello, Judge Ostrowski, Judge Rubin and Judge Shea concur.

Mr. Kovner dissents as to sanction only and votes that respondent be censured.

Judge Alexander did not participate.

Mr. Sheehy 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: April 12, 1984



David Bromberg, Esq.
Member