

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

MILTON SARDONIA,

Determination

a Justice of the Bethel Town Court,
Sullivan County.

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

The respondent, Milton Sardonia, a justice of the Town Court of Bethel, Sullivan County, was served with a Formal Written Complaint dated January 9, 1979, setting forth ten charges of misconduct pertaining to (i) the improper assertion of influence in three traffic cases and (ii) respondent's failure to disqualify himself in seven cases in which one of the parties was represented by respondent's personal attorney. In his answer dated January 23, 1979, respondent admitted the factual allegations set forth in the charges.

By notice dated September 7, 1979, the administrator of the Commission moved for summary determination, pursuant to Section 7000.6(c) of the Commission's rules (22 NYCRR 7000.6[c]). Respondent

did not oppose the motion. The Commission granted the motion by order dated October 3, 1979, deemed respondent's misconduct established as to all ten charges in the Formal Written Complaint, and set a date for oral argument on the issue of an appropriate sanction.

The Commission heard oral argument on November 13, 1979, thereafter considered the record in this proceeding, and upon that record renders this determination.

With respect to Charges I through III of the Formal Written Complaint, the Commission makes the following findings of fact.

1. On December 10, 1973, respondent sent a letter to Justice Jack Levine of the Town Court of Liberty, seeking special consideration on behalf of the defendant in People v. Rose M. Albrecht, a motor vehicle case then pending before Judge Levine.

2. On December 10, 1973, respondent sent a letter to Justice Michael Altman of the Town Court of Fallsburg, seeking special consideration on behalf of the defendant in People v. Randy J. Nygard, a motor vehicle case then pending before Judge Altman.

3. On July 8, 1975, respondent sent a letter to Justice Richard Hering of the Town Court of Liberty, seeking special consideration on behalf of the defendant in People v. George Schneiderman, a motor vehicle case then pending before Judge Hering.

Upon the foregoing facts, 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.

With respect to Charges IV through X of the Formal Written Complaint, the Commission makes the following findings of fact.

4. On June 4, 1975, respondent failed to disqualify himself and reduced a charge of driving while intoxicated to speeding, in People v. William Nelson, notwithstanding that the defendant's attorney, Leo Glass, was at that time acting as respondent's attorney in another matter.

5. On April 10, 1976, and thereafter, respondent failed to disqualify himself and presided over the case of Soule v. Wallgreen, notwithstanding that the plaintiff's attorney, Leo Glass, had previously represented the respondent.

6. On August 11, 1977, respondent failed to disqualify himself and dismissed or adjudicated charges of criminal mischief, harassment and resisting arrest, in People v. Paul Newham, notwithstanding that the defendant's attorney, Leo Glass, was at that time acting as respondent's attorney in another matter.

7. On January 19, 1977, respondent failed to disqualify himself and reduced a charge of assault to harassment in People v. Derrick Heuduk, notwithstanding that the defendant's attorney, Leo Glass, had previously represented the respondent.

8. On December 19, 1973, respondent failed to disqualify himself, dismissed charges of possession of a deadly weapon and harassment, and reduced a charge of assault in the second degree,

a felony, to assault in the third degree, a misdemeanor, in People v. Dennis Dauch, notwithstanding that the defendant's attorney, Leo Glass, had previously represented the respondent.

9. On November 3, 1973, respondent failed to disqualify himself and adjudicated a charge of resisting arrest in People v. Dennis Dauch, notwithstanding that the defendant's attorney, Leo Glass, had previously represented the respondent.

10. On May 14, 1974, respondent failed to disqualify himself and adjudicated a charge of unregistered motor vehicle in People v. Robert A. Mueller, notwithstanding that the defendant's attorney, Leo Glass, had previously represented the respondent.

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

As to the three charges pertaining to the improper assertion of influence in traffic cases, 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 makes such a request is guilty of favoritism, as is the judge who accedes to such a request. By making ex parte requests of other judges for favorable dispositions for the defendants in traffic cases, respondent violated the applicable rules enumerated above. Courts in this state and other jurisdictions have found that favoritism is serious judicial misconduct and that ticket-fixing is a form of favoritism.

As to the seven charges pertaining to respondent's having presided over cases in which his personal attorney appeared, the Commission makes the following observations.

The Commission has considered the context of the applicable ethical standards and respondent's argument that he had been unaware of the impropriety of his acts until the Commission had commenced its investigation.

While there are specific prohibitions against a judge presiding over cases involving his or his spouse's relatives (Jud. L. §14; Rules § 33.3[c]), and case law prohibiting a judge from presiding over matters involving his former clients (Matter of Filipowicz, 54 AD2d 169 [2d Dept. 1976]), there is no specific prohibition against a judge presiding over a matter involving his personal attorney. The applicable ethical standards and rules, of course, cannot and should not be expected to specify every conceivable type of impropriety. The language of the Rules, where it is broad, is intended to foster among the judiciary conduct which is reasonable and appropriate in circumstances not specifically addressed. The broad language of Section 33.3(c)(1) of the Rules, which requires a judge to "disqualify himself in a proceeding in which his impartiality might reasonably be questioned," is such a standard appropriate to the instant matter.

The Commission has considered the nature of respondent's court and the nature of a relatively small town in which situations such as those which confronted respondent may be expected. Many towns and villages have few resident attorneys with whom the local

citizens, including those who happen to be justices, may consult regularly and conveniently for legal services. While an appearance of impropriety is nonetheless created when a local attorney who has performed legal services for a judge appears in a case before that judge, the situation may result from the exigencies of town and village life, and misconduct may not necessarily underlie the judge's failure to disqualify himself.

The Commission acknowledges respondent's recent attempts to avoid even the appearance of impropriety. Since the investigation in the instant matter was initiated, respondent has disqualified himself in all cases in which his personal attorney has appeared before him, and he promises to do so in the future. Although the close personal ties which exist in a town or village are not within a judge's control, the character of his court is. Where the applicable rules do not specifically require disqualification, but there remains doubt as to the propriety in presiding because of a relationship to a participant, a judge should at least disclose the relationship on the record, to allow the parties the opportunity to consent to the judge's presiding or request his recusal. In the instant case, the Commission is satisfied that respondent appreciates his responsibility and will conduct himself accordingly.

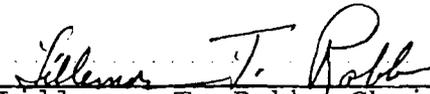
By reason of the foregoing, with respect only to the three charges involving the improper assertion of influence in traffic cases, the Commission determines that the appropriate sanction is admonition. With respect to the remaining seven

charges, the Commission considers its foregoing commentary to be in lieu of a sanction.

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.


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

Dated: January 14, 1980
Albany, New York

APPEARANCES:

Gerald Stern (Judith E. Siegel-Baum, Of Counsel) for the Commission

Langan, Grossman, Kinney & Dwyer (By Richard Grossman) for Respondent