STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

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In the Matter of the Proceeding
Pursuant to Section 44, subdivision 4,
of the Judiciary Law in Relation to

WALTER J. SCHURR,

a Justice of the Friendship Town Court,
Allegany County.

# DETERMINATION

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THE COMMISSION:

Honorable Thomas A. Klonick, Chair
Stephen R. Coffey, Esq., Vice Chair
Joseph W. Belluck, Esq.
Richard D. Emery, Esq.
Paul B. Harding, Esq.
Elizabeth B. Hubbard
Marvin E. Jacob, Esq.
Honorable Jill Konviser
Honorable Karen K. Peters
Honorable Terry Jane Ruderman

APPEARANCES:

Robert H. Tembeckjian (John J. Postel and David M. Duguay, Of Counsel) for the Commission

Richardson & Pullen, P.C. (by David T. Pullen) for the Respondent

The respondent, Walter J. Schurr, a Justice of the Friendship Town Court, Allegany County, was served with a Formal Written Complaint dated September 9, 2008,

containing two charges. The Formal Written Complaint alleged that respondent reduced Speeding charges in five cases without notice to or the consent of the prosecutor, and reduced a Speeding charge in another case based on an *ex parte* discussion with a co-worker, who was the defendant's neighbor and friend. Respondent filed a verified answer dated October 22, 2008.

On January 20, 2009, the Administrator of the Commission, respondent's counsel and respondent entered into an Agreed Statement of Facts pursuant to Judiciary Law §44(5), stipulating that the Commission make its determination based upon the agreed facts, recommending that respondent be censured and waiving further submissions and oral argument.

On March 12, 2009, the Commission accepted the Agreed Statement and made the following determination.

1. Respondent was appointed as the Friendship Town Court Justice on January 3, 2006, and took the bench on May 9, 2006, after completing his judicial educational and training requirements. He is not an attorney. He is also employed at Friendship Dairies in the Town of Friendship.

As to Charge I of the Formal Written Complaint:

2. In the following five cases, respondent permitted defendants charged with Speeding to plead guilty to the reduced charge of Failure To Obey a Traffic Control Device in full satisfaction of the original charge, without notice to or the consent of the

Allegany County District Attorney's Office or the New York State troopers who issued the tickets, in violation of Section 220.10(3) of the Criminal Procedure Law.

*People v. Christopher Sam*

3. In *People v. Christopher Sam*, the defendant pleaded guilty by mail to a Speeding ticket issued by New York State Trooper Anthony Dubin on August 4, 2006. With the plea, the defendant sent an *ex parte* letter to respondent dated August 5, 2006, requesting leniency in assessing points to his driver's license. Respondent has no relationship with the defendant. Respondent did not notify the District Attorney or Trooper Dubin about this communication.

4. In view of Mr. Sam's letter, respondent did not accept his guilty plea to the Speeding charge. Instead, respondent sent him a letter dated August 8, 2006, informing him that he would accept a guilty plea to a lesser charge, a violation of Section 1110(a) of the Vehicle and Traffic Law, Failure To Obey a Traffic Control Device. In the letter, respondent explained to Mr. Sam that by reducing the Speeding charge, Mr. Sam saved four points on his license and up to $150 on the assessed fine. Respondent told Mr. Sam that he had until August 23, 2006 to pay the $150 fine and $55 surcharge if he agreed with the reduction offer. Mr. Sam was instructed to contact the court to obtain a trial date if he disagreed with the reduction. Respondent did not send a copy to the District Attorney or the arresting trooper.

5. Respondent made the offer and reduced Mr. Sam's Speeding charge without notice to or the consent of the Allegany County District Attorney's Office or

Trooper Dubin.

6. Respondent accepted Mr. Sam's plea to the reduced charge of Failure To Obey a Traffic Control Device without notice to or the consent of the prosecution. Respondent issued Mr. Sam a receipt on August 17, 2006, after receiving payment from him of the fine and surcharge.

*People v. David Dougherty*

7. In *People v. David Dougherty,* the defendant appeared before respondent on September 26, 2006, to answer a Speeding ticket issued by New York State Trooper Timothy Pompeo on August 16, 2006. Respondent has no relationship with the defendant. Trooper Pompeo was not present in respondent's court on September 26, 2006.

8. Respondent told Mr. Dougherty that he had spoken with Trooper Pompeo, who had consented to offering Mr. Dougherty the reduced charge of Failure To Obey a Traffic Control Device, in satisfaction of the Speeding charge, provided that Mr. Dougherty pleaded guilty. No such conversation between respondent and Trooper Pompeo had occurred.

9. Respondent made the offer to Mr. Dougherty without notice to or the consent of the Allegany County District Attorney's Office or Trooper Pompeo.

10. Respondent accepted Mr. Dougherty's plea to the reduced charge of Failure To Obey a Traffic Control Device on September 26, 2006, without notice to or the consent of the prosecution. Respondent imposed a $150 fine and $55 surcharge.

11. On October 2, 2006, after the court received Mr. Dougherty's payment of the fine and surcharge, respondent issued him a receipt.

*People v. Dalton Martello*

12. In *People v. Dalton Martello,* the defendant appeared before respondent on December 12, 2006 to answer a Speeding ticket issued by New York State Trooper Kevin Prince on October 8, 2006. Respondent has no relationship with the defendant. Trooper Prince was not present in respondent's court on December 12, 2006.

13. Respondent told Mr. Martello that he had spoken with Trooper Prince, who had consented to offering Mr. Martello the reduced charge of Failure To Obey a Traffic Control Device, in satisfaction of the Speeding charge, provided that Mr. Martello pleaded guilty. No such conversation between respondent and Trooper Prince had occurred.

14. Respondent made the offer to Mr. Martello without notice to or the consent of the Allegany County District Attorney's Office or Trooper Prince.

15. Respondent accepted Mr. Martello's plea to the reduced charge of Failure To Obey a Traffic Control Device on December 12, 2006, without notice to or the consent of the prosecution. Respondent imposed a $150 fine and $55 surcharge.

16. On January 30, 2007, after the court received Mr. Martello's payment of the fine and surcharge, respondent issued him a receipt.

*People v. Frank Kwakye-Berko*

17. In *People v. Frank Kwakye-Berko*, the defendant appeared before

respondent on or about January 30, 2007, to answer a Speeding ticket issued by New York State Trooper Timothy Pompeo on November 14, 2006. Respondent has no relationship with the defendant. Trooper Pompeo was not present in respondent's court on January 30, 2007.

18. Respondent told Mr. Kwakye-Berko that he had spoken with Trooper Pompeo, who had consented to offering the defendant the reduced charge of Failure To Obey a Traffic Control Device, in satisfaction of the Speeding charge, provided that the defendant pleaded guilty. No such conversation between the respondent and Trooper Pompeo had occurred.

19. Respondent made the offer to Mr. Kwakye-Berko without notice to or the consent of the Allegany County District Attorney's Office or Trooper Pompeo.

20. Respondent accepted Mr. Kwakye-Berko's plea to the reduced charge of Failure To Obey a Traffic Control Device on January 30, 2007, without notice to or the consent of the prosecution. Respondent imposed a $150 fine and $55 surcharge.

21. On February 7, 2007, after the court received Mr. Kwakye-Berko's payment of the fine and surcharge, respondent issued him a receipt.

*People v. William Redfield*

22. In *People v. William Redfield*, the defendant pleaded not guilty by mail to a Speeding ticket issued by New York State Trooper Timothy Pompeo on September 6, 2006. With the plea, the defendant sent an *ex parte* letter to respondent dated October 6, 2006, indicating that he had a clean driving record and requesting the

opportunity to plead to a lesser charge. Mr. Redfield further wrote that he would appreciate handling the matter by mail since he lived in Utica, New York, and traveling to respondent's court would pose a hardship. Respondent has no relationship with the defendant. Respondent did not notify the District Attorney or Trooper Pompeo about this communication.

23. In response to Mr. Redfield's letter, respondent telephoned him on October 10, 2006, and engaged in an *ex parte* communication about the Speeding charge. Respondent told Mr. Redfield that he had spoken with Trooper Pompeo, who had consented to offering the reduced charge of Failure To Obey a Traffic Control Device, in satisfaction of the Speeding charge. No such conversation between respondent and Trooper Pompeo had occurred.

24. Respondent made the offer to Mr. Redfield without notice to or the consent of the Allegany County District Attorney's Office or Trooper Pompeo.

25. Respondent accepted Mr. Redfield's guilty plea to the reduced charge of Failure To Obey a Traffic Control Device during their *ex parte* telephone conversation on October 10, 2006, without notice to or the consent of the prosecution.

26. Respondent fined Mr. Redfield $150 with a $55 surcharge, for which the court issued a receipt on January 28, 2007, after it was paid.

As to Charge II of the Formal Written Complaint:

27. Joseph Hollister was issued a Speeding ticket in the Town of Friendship on September 9, 2006, which directed him to appear on the charge in

Friendship Town Court on September 26, 2006.

28. Mr. Hollister was a neighbor and friend of Lee Evans, who was a co-worker of respondent at Friendship Dairies in or about 2006.

29. Prior to Mr. Hollister's court appearance, Mr. Evans approached respondent at work and spoke to him about Mr. Hollister's Speeding ticket. Mr. Evans told respondent that Mr. Hollister was a member of the clergy, that he was a very nice man who would do anything for anyone, and that he was a great help to the community.

30. Shortly thereafter, and prior to Mr. Hollister's appearance date, respondent had a private conversation with Friendship Police Officer Kevin Brisbee, who had issued the ticket to Mr. Hollister. The conversation took place in respondent's chambers at the courthouse. Respondent asked Officer Brisbee if Mr. Hollister was a problem at any time during the traffic stop, and the officer replied that Mr. Hollister was very polite and respectful during the traffic stop. Respondent then asked whether Officer Brisbee would consider reducing the Speeding charge to a Failure To Obey a Traffic Control Device, a violation of Section 1110(a) of the Vehicle and Traffic Law. Officer Brisbee indicated that he would not object to such a reduction.

31. On September 24, 2006, subsequent to his conversation with Officer Brisbee, respondent spoke with Mr. Evans while they were working at Friendship Dairies. Respondent told Mr. Evans that he was considering reducing Mr. Hollister's Speeding charge to Failure To Obey a Traffic Control Device.

32. On September 26, 2006, Mr. Hollister appeared in court and pleaded

guilty to the reduced charge of violating Section 1110(a) of the Vehicle and Traffic Law, Failure To Obey a Traffic Control Device, in satisfaction of the original Speeding charge. Respondent imposed a $150 fine and $55 surcharge, which the court received on October 2, 2006.

33. Respondent recognizes that his actions in Mr. Hollister's case created the appearance of favoritism on behalf of a co-worker's personal friend, and respondent is committed to preventing any similar situation from arising in the future. To that end, he is vigilant in avoiding any attempted *ex parte* communication and has adopted the practice of immediately informing anyone who approaches him outside of the courtroom that he can only address court business in appropriate circumstances in court.

Supplemental Findings:

34. Respondent first sat on the bench as a Justice of the Friendship Town Court on May 9, 2006, and within approximately a month assumed responsibility for all the cases in the court, as well as all the administrative and record-keeping duties, because his co-justice and court clerk abruptly left their positions.

35. From May 2006 through December 2007, David Dougherty, Dalton Martello, Frank Kwakye-Berko and William Redfield were the only defendants in respondent's court to plead not guilty to Speeding charges issued by New York State troopers. All four defendants answered their tickets after September 1, 2006, the effective date of the order by the New York State Police Superintendent precluding troopers from appearing in court for the purpose of negotiating plea reductions in traffic

cases. Respondent believed at the time that it was his responsibility to negotiate pleas as a way of disposing of contested Vehicle and Traffic Law vehicle charges.

36. It was not until December 4, 2007, that respondent learned that the Allegany County District Attorney's Office had instituted new procedures for negotiating plea reductions in traffic cases commenced by the New York State Police. Since that date, respondent has diligently adhered to a policy consistent with law.

37. Respondent has been fully cooperative and forthright with regard to this proceeding.

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), 100.3(B)(1), 100.3(B)(4), 100.3(B)(6), 100.3(B)(9)(a) and 100.3(C)(1) of the Rules Governing Judicial Conduct ("Rules") and should be disciplined for cause, pursuant to Article 6, Section 22, subdivision a, of the New York State Constitution and Section 44, subdivision 1, of the Judiciary Law. Charges I and II of the Formal Written Complaint are sustained, and respondent's misconduct is established.

The record establishes that in five cases respondent permitted defendants charged with Speeding to plead guilty to a reduced charge without the consent of the prosecutor. Such conduct was contrary to the statutory mandate requiring the prosecutor's consent for such reductions (CPL §220.10[3]). Respondent's conduct also violated ethical principles requiring a judge to afford to all parties the right to be heard

according to law (Rules, §100.3[B][6]).

It has been stipulated that respondent, who had no personal relationship with the defendants, reduced the charges on his own based upon the erroneous belief that it was his responsibility to negotiate pleas as a way of disposing of contested traffic charges. At the time of these cases, respondent was new to the bench, and a recent directive by the State Police Superintendent, which precluded troopers from engaging in plea bargaining, may have created some uncertainty as to the appropriate procedures for disposing of such matters. Nonetheless, it was respondent's obligation to know the law and to comply with the statutory requirements (Rules, §100.3[B][1]), and his failure to do so constitutes misconduct. *Matter of Cook*, 2006 Annual Report 119 (Comm on Judicial Conduct). Not until a year later did respondent become aware of the new procedures instituted by the Allegany County District Attorney's office for negotiating plea reductions in traffic cases commenced by the State Police.

Inexplicably, respondent also told the defendants in four of the cases that he had spoken to the trooper who issued the ticket and that the trooper consented to the reduction. It has been stipulated that, in fact, no such conversations had occurred. Respondent's statements appear to suggest that he knew that the consent of the prosecutor was required for such reductions and that he attempted to conceal that his actions were contrary to law. Such deception "is antithetical to the role of a judge, who is sworn to uphold the law and seek the truth." *Matter of Myers*, 67 NY2d 550, 554 (1986).

It was also misconduct for respondent to grant a reduction in the *Hollister*

case based upon an *ex parte* discussion with a co-worker, the defendant's friend and neighbor, who spoke to the judge about his friend's Speeding ticket and told the judge that the defendant was a clergyman and "a very nice man." The record establishes that based on that conversation, respondent circumvented the normal judicial process in order to grant special consideration to the defendant. After the conversation with his co-worker, respondent reached out to the local police officer who issued the ticket and ascertained that the officer would not object to the reduction respondent proposed. Such conduct conveyed the appearance that the lenient disposition accorded to this defendant was based not on the merits of the case, but on the fact that the defendant had a friend who knew the judge. This constitutes ticket-fixing, which is a form of favoritism that has long been condemned.

In *Matter of Byrne*, 47 NY2d (b), (c) (1979), the Court on the Judiciary 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"; such conduct, the Court stated, "is wrong, and has always been wrong." *See also, e.g., Matter of Bulger*, 48 NY2d 32 (1979). By granting such special consideration, respondent engaged in conduct that subverts the entire system of justice, which is based on the impartiality and independence of the judiciary. Such behavior undermines respect for the judiciary as a whole.

In the late 1970s, the Commission uncovered a widespread pattern of ticket-fixing in New York State. As the Commission stated in a special report about the

assertion of influence in traffic cases, ticket-fixing results in "two systems of justice, one for the average citizen and another for people with influence." The report noted: "While most people charged with traffic offenses accept the consequences, including the full penalties of the law ... some are treated more favorably simply because they are able to make the right 'connections'" ("*Ticket-Fixing: The Assertion of Influence in Traffic Cases*," Interim Report, 6/20/77, p. 16). By the early 1980s, the Commission had publicly disciplined over 140 judges for the practice of ticket-fixing. With the benefit of a significant body of case law, every judge should be well aware that such conduct is prohibited.

The Court of Appeals has stated that even a single incident of ticket-fixing "is misconduct of such gravity as to warrant removal" (*Matter of Reedy v. Comm on Judicial Conduct*, 64 NY2d 299, 302 [1985]), although mitigating factors may warrant a reduced sanction (*see*, *Matter of Edwards*, 67 NY2d 153 [1986] [censure]; *see also Matter of Cook*, *supra*, and *Matter of Bowers*, 2005 Annual Report 125 [Comm on Judicial Conduct] [censure in both cases based on a joint recommendation]).

Certain factors in this case indicate that censure, rather than removal, is appropriate. As noted previously, respondent was new to the bench during this period and it appears that he was unfamiliar with the appropriate procedures for reducing traffic charges, especially in light of the 2006 State Police directive. While these factors do not excuse respondent's actions, they mitigate his misconduct under the circumstances presented here. Significantly, respondent had no personal relationship with the

defendants in the five cases cited in Charge I, and thus it appears that, in reducing the charges *sua sponte* in those cases, he was not motivated by favoritism. We also note that respondent has acknowledged his misconduct, that he has been fully cooperative, and that since learning in December 2007 of the appropriate procedures he has diligently adhered to a policy consistent with law.

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

Judge Klonick, Mr. Coffey, Mr. Belluck, Mr. Emery, Mr. Harding, Ms. Hubbard, Mr. Jacob, Judge Konviser, Judge Peters and Judge Ruderman concur.

CERTIFICATION

It is certified that the foregoing is the determination of the State Commission on Judicial Conduct.

Dated: March 23, 2009

Jean M. Savanyu, Esq.
Clerk of the Commission
New York State
Commission on Judicial Conduct