

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

DENNIS R. FREEMAN,

a Justice of the Newstead Town Court and
the Akron Village Court, Erie County.

THE COMMISSION:

Henry T. Berger, Esq., Chair
Honorable Myriam J. Altman
Helaine M. Barnett, Esq.
Herbert L. Bellamy, Sr.
Honorable Carmen Beauchamp Ciparick
E. Garrett Cleary, Esq.
Dolores Del Bello
Lawrence S. Goldman, Esq.
Honorable Eugene W. Salisbury
John J. Sheehy, Esq.
Honorable William C. Thompson

APPEARANCES:

Gerald Stern for the Commission

Honorable Dennis R. Freeman, pro se

The respondent, Dennis R. Freeman, a justice of the Newstead Town Court and the Akron Village Court, Erie County, was served with a Formal Written Complaint dated July 3, 1991, alleging that he used the prestige of his office on behalf of a customer of his private business. Respondent filed an answer dated July 26, 1991.

On September 10, 1991, the administrator of the Commission and respondent entered into an agreed statement of facts pursuant to Judiciary Law §44(5), waiving the hearing provided in Judiciary Law §44(4), stipulating that the Commission make its determination based on the pleadings and the agreed upon facts, jointly recommending that respondent be admonished and waiving further submissions and oral argument.

On September 19, 1991, the Commission approved the agreed statement and made the following determination.

1. Respondent has been a justice of the Newstead Town Court since January 1, 1990, and a justice of the Akron Village Court since April 1, 1985.

2. Respondent, a part-time judge, owns Freeman's Sport Shop, a sporting goods store where he sells firearms. Respondent sold Richard L. Campbell four pistols on January 4, 1988, May 5, 1989, October 12, 1989, and January 26, 1990.

3. On July 30, 1990, Mr. Campbell was charged with Driving While Intoxicated. On August 27, 1990, his pistol license was suspended by Erie County Court Judge John V. Rogowski, and he was ordered to surrender the four pistols that had been sold to him by respondent.

4. On November 14, 1990, Mr. Campbell was convicted of Driving While Ability Impaired.

5. On November 19, 1990, Mr. Campbell asked respondent to provide him with a letter in support of his attempt to have his pistol permit reinstated.

6. On November 19, 1990, respondent wrote on his town court stationery to Judge Rogowski on behalf of Mr. Campbell. The letter, bearing respondent's name and judicial title, stated:

I have known the above individual for several years and hope by this conviction of Driving While Impaired (1192.1 V&T Law) that this would not put his pistol permit in jeopardy.

I do believe he has learned his lesson and he has always shown to me by his actions to be careful and conscientious of his duties and responsibilities by being granted the privilege of having a pistol permit in New York State.

I would ask, therefore, knowing the seriousness of his preceding actions, that you allow him to maintain his pistol permit.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated the Rules Governing Judicial Conduct, 22 NYCRR 100.1, 100.2, 100.2(a), 100.2(c) and 100.3(a)(4), and Canons 1, 2, 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 used the prestige of his judicial office to advance the private interests of a customer of his business, in violation of the Rules Governing Judicial Conduct, 22 NYCRR 100.2(c). It is wrong for a judge to intervene on behalf of another in a proceeding in another court, whether the communication is verbal (Matter of Kiley v. State Commission on Judicial Conduct, 74 NY2d 364) or written (Matter of Wright, 1989 Ann Report of NY Commn on Jud Conduct, at 147).

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

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

Mr. Berger, Judge Altman, Ms. Barnett, Mr. Bellamy, Judge Ciparick, Mr. Cleary, Mrs. Del Bello, Judge Salisbury and Judge Thompson concur.

Mr. Goldman and Mr. Sheehy were 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: November 8, 1991

Henry T. Berger
Henry T. Berger, Esq., Chair
New York State
Commission on Judicial Conduct