

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

BENJAMIN L.F. LEAVITT,

DETERMINATION

a Justice of the Ossining Town Court,
Westchester County.

THE COMMISSION:

Joseph W. Belluck, Esq., Chair
Taa Grays, Esq., Vice Chair
Honorable Fernando M. Camacho
Honorable John A. Falk
Honorable Robert J. Miller
Nina M. Moore¹
Marvin Ray Raskin, Esq.
Ronald J. Rosenberg, Esq.
Graham B. Seiter, Esq.
Honorable Anil C. Singh
Akosua Garcia Yeboah

APPEARANCES:

Robert H. Tembeckjian (Mark Levine and Vickie Ma, Of
Counsel) for the Commission

Honorable Benjamin L.F. Leavitt, *pro se*

¹ Ms. Moore joined the Commission on September 6, 2023 and did not participate in this matter.

Respondent, Benjamin L.F. Leavitt, a Justice of the Ossining Town Court, Westchester County, was served with a Formal Written Complaint (“Complaint”) dated October 4, 2022 containing one charge. The Complaint alleged that on or about September 8, 2021, respondent sought special consideration from his co-judge, Jeffrey W. Gasbarro, in connection with the disposition of one or more parking tickets issued to Amanda Billips, his mail carrier for the United States Postal Service (“USPS”). Respondent filed an Answer dated November 28, 2022.

By motion dated January 30, 2023, the Administrator of the Commission moved for summary determination pursuant to Section 7000.6(c) of the Commission’s Operating Procedures and Rules. Respondent filed a response dated March 3, 2023 in which he did not oppose the motion. By letter dated March 9, 2023, the Administrator filed a reply. By decision and order dated April 20, 2023, the Commission granted the Administrator’s motion and determined that the factual allegations of the Complaint were sustained and that respondent’s misconduct was established.

By letter dated April 20, 2023, the Commission set a schedule for briefs and oral argument on the issue of sanction. On May 26, 2023, the Administrator submitted a memorandum which argued that respondent should be censured and respondent made a submission arguing that a private letter of caution or admonition was appropriate. Both the Administrator and respondent filed replies

on June 23, 2023. On July 20, 2023, the Administrator and respondent appeared before the Commission for oral argument on the issue of sanction. Thereafter, the Commission considered the record of the proceeding and made the following findings of fact:

1. Respondent has been a Justice of the Ossining Town Court, Westchester County, since 2020. Respondent's current term expires on December 31, 2023. He was admitted to the practice of law in New York in 2004.

2. Respondent is acquainted with Amanda Billips in her capacity as a mail carrier for the USPS. At all times relevant to the matter herein, Ms. Billips' duties included delivering mail in Ossining, New York, on a route that included respondent's home.

3. From in or about 2019 to 2021, Ms. Billips was charged with one or more parking violations under the Vehicle and Traffic Law. She was scheduled to appear in Ossining Town Court in connection with the tickets on September 9, 2021.

4. Prior to the return date, Ms. Billips, who knew respondent was a judge, asked him for help with her parking tickets. Respondent replied that he would let the court know that she would be coming.

5. On or about September 8, 2021, respondent sent a text message to his co-judge, Jeffrey W. Gasbarro, asking whether the court's calendar for the next day would include parking tickets. Judge Gasbarro replied affirmatively.

6. Respondent then sent Judge Gasbarro the following text message: "My mail carrier is on for a parking ticket. I told her I would talk with you. If you could take her postal service into account when deciding whether or not to go lower on the fine than Sonya is recommending that would be great." (By "Sonya," respondent meant Deputy Corporation Counsel Sonia Tanksley, who serves as the Ossining Village Prosecutor.)

7. Judge Gasbarro presided over Ms. Billips's parking matters the following day and accepted a written plea agreement that Ms. Billips and Ms. Tanksley negotiated without his involvement. Judge Gasbarro imposed the fines reflected in the negotiated agreement.

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) and 100.2(C) of the Rules Governing Judicial Conduct and should be disciplined for cause pursuant to Article VI, Section 22, subdivision (a) of the Constitution and Section 44, subdivision 1 of the Judiciary Law. Charge I of the Formal Written Complaint is sustained and respondent's misconduct is established.

Respondent acted in a manner that was inconsistent with his obligation to maintain high standards of conduct and to “act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.” (Rules, §§100.1, 100.2(A)) The Rules provide that “[a] judge shall not lend the prestige of judicial office to advance the private interests of the judge or others. . . .” (Rules, §100.2(C)) Respondent violated his ethical obligations when he contacted his co-judge in an attempt to use his influence to assist his mail carrier in connection with a parking violation matter pending before his co-judge.

The ethical rules require judges to observe high standards of conduct both on and off the bench and prohibit judges from lending the prestige of judicial office to advance the interests of another. *Matter of Lonschein*, 50 NY2d 569, 571-572 (1980) (“no Judge should ever allow personal relationships to color his conduct or lend the prestige of his office to advance the private interests of others. . . . Judges must assiduously avoid those contacts which might create even the appearance of impropriety.”); *Matter of Smith*, 2014 Ann Rep of NY Commn on Jud Conduct at 208, 211-212 (“Respondent’s unsolicited letter to the Division of Parole on behalf of the son of a family acquaintance was inconsistent with well-established ethical standards prohibiting a judge from lending the prestige of judicial office to advance private interests”) Here, when respondent contacted his co-judge regarding his mail carrier’s parking violation matter pending before his co-judge,

respondent violated the Rules and brought reproach upon the judiciary. Moreover, respondent placed his co-judge, who was a new judge at the time, in a difficult position.²

In determining the appropriate sanction, we note that respondent engaged in a singular attempt to use his influence to benefit another person. There is no indication that respondent acted for his personal benefit or gained in any way from contacting his co-judge about his mail carrier's parking matter. Rather, he appears to have been motivated by a genuine, though inappropriate, wish to help his mail carrier. Respondent promptly accepted responsibility for his misconduct. He also expressed regret that he put his co-judge in a difficult situation and indicated that he has apologized to his co-judge. We have also taken into consideration respondent's unblemished career as a lawyer and as a judge. When respondent appeared before us, he was contrite and pledged to be mindful of his ethical obligations and the high standards of judicial conduct.

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

Mr. Belluck, Judge Camacho, Judge Falk, Judge Miller, Judge Singh and Ms. Yeboah concur.

² To his credit, respondent's co-judge contacted the Advisory Committee on Judicial Ethics and reported respondent's conduct to the Commission.

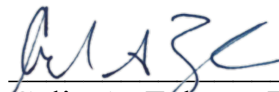
Mr. Raskin and Mr. Seiter dissent as to sanction and vote that a private letter of caution is the appropriate disposition.

Ms. Grays, Ms. Moore and Mr. Rosenberg did not participate.

CERTIFICATION

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

Dated: September 21, 2023



Celia A. Zahner, Esq.
Clerk of the Commission
New York State
Commission on Judicial Conduct