

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

BRUCE R. BREGMAN,

a Justice of the Lynbrook Village Court,
Nassau County.

THE COMMISSION:

Henry T. Berger, Esq., Chair
Helaine M. Barnett, Esq.
E. Garrett Cleary, Esq.
Stephen R. Coffey, Esq.
Mary Ann Crotty
Lawrence S. Goldman, Esq.
Honorable Daniel F. Luciano
Honorable Juanita Bing Newton
Honorable Eugene W. Salisbury
Barry C. Sample
Honorable William C. Thompson

APPEARANCES:

Gerald Stern for the Commission

Charles F. Brennan for Respondent

The respondent, Bruce R. Bregman, a justice of the Lynbrook Village Court, Nassau County, was served with a Formal Written Complaint dated August 14, 1995, alleging that he compelled defendants in traffic cases to attend "pre-trial conferences" in order to negotiate pleas with prosecutors, then conducted ex parte communications with the prosecutors. Respondent did not answer the Formal Written Complaint.

On January 3, 1996, the administrator of the Commission, respondent and respondent's counsel 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 agreed upon facts, jointly recommending that respondent be admonished and waiving further submissions and oral argument.

On January 11, 1996, the Commission approved the agreed statement and made the following determination.

1. Respondent has been a justice of the Lynbrook Village Court since 1989.

2. Between January 1, 1989, and April 20, 1995, respondent failed to advise defendants in traffic cases of a trial date upon receipt of pleas of not guilty, as required by Vehicle and Traffic Law §1806. Instead, respondent authorized his court staff to send notices requiring the defendants to appear for "pre-trial conferences" with village prosecutors.

3. The prosecutors met with defendants in traffic cases and in cases alleging violations of village ordinances, negotiated plea reductions and advised respondent of the proposed reductions during ex parte conversations.

4. Respondent decided during the ex parte conversations whether to approve the plea reductions. He set fines in cases in which he approved the reductions without hearing from the defendants. On occasion, the prosecutors

recommended fines to respondent. The prosecutors relayed respondent's decisions to the defendants.

5. On April 21, 1995, after his appearance before a Commission member in connection with the investigation of this matter, respondent changed the procedure. He advised his court staff and the prosecutors that notices should no longer be sent by the court but that the prosecutors should write to defendants to schedule pre-trial conferences. Respondent continued to meet ex parte with the prosecutors.

6. On June 7, 1995, respondent again changed the procedure. Thereafter, he opened court sessions with the announcement that he would be available in chambers for defendants to appear before him. He advised prosecutors to tell defendants during pre-trial conferences that respondent would be available to speak with them at their option. Prosecutors continued to meet privately with respondent to discuss proposed plea reductions. Respondent indicated whether the pleas were acceptable and set fines.

7. Respondent has stipulated in this proceeding that he will no longer meet privately with prosecutors concerning pending cases.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated the Rules Governing Judicial Conduct then in effect, 22 NYCRR 100.1,

100.2(a) and 100.3(a)(4)¹, and Canons 1, 2A² and 3A(4) of the Code of Judicial Conduct. Charge I of the Formal Written Complaint is sustained, and respondent's misconduct is established.

When a defendant in a traffic case pleads not guilty by mail, the law requires that the judge immediately set a trial date. (Vehicle and Traffic Law §1806). It does not provide for "pre-trial conferences" at which defendants are required by the court to negotiate pleas. It is misconduct for a judge to require such proceedings on a regular basis. (See, Matter of Masner, 1990 Ann Report of NY Commn on Jud Conduct, at 133, 134). Such a practice is an unnecessary burden on defendants and is per se coercive; respondent should have known that defendants charged with minor infractions, carrying the likelihood of only small fines, would choose to plead guilty rather than to return to court in order to exercise their right to a trial. (See, Matter of Cavotta, unreported, NY Commn on Jud Conduct, May 3, 1995).

It was also improper for respondent to discuss privately with prosecutors the proposed plea reductions and to hear recommendations for fines in ex parte sessions with prosecutors. (See, Rules Governing Judicial Conduct then in

¹Now Section 100.3(B)(6)

²The Formal Written Complaint cites Canon 2B of the Code of Judicial Conduct. By the agreed statement of facts, the parties stipulated that this was a typographical error and that the charges should be amended. The Formal Written Complaint is hereby amended to reflect a violation of Canon 2A.

effect, 22 NYCRR 100.3[a][4], now Section 100.3(B)(6); see also, Matter of Greenfeld v State Commission on Judicial Conduct, 71 NY2d 389, 391; Matter of Sardino, 1983 Ann Report of NY Commn on Jud Conduct, at 173, 187, accepted, 58 NY2d 286).

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

Mr. Berger, Ms. Barnett, Mr. Cleary, Mr. Coffey, Ms. Crotty, Mr. Goldman, Judge Newton, Judge Salisbury and Judge Thompson concur.

Mr. Sample was not present.

Judge Luciano was not a member of the Commission when the vote was taken in this matter.

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: March 20, 1996

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