

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

----- X

In the Matter :

- of - :

DUANE ALGIRE, :

a Justice of the Town Court :
of Barker, Broome County. :

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DETERMINATION

STATE COMMISSION ON
JUDICIAL CONDUCT

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PRELIMINARY STATEMENT

This Determination of the State Commission on Judicial Conduct (hereinafter the "Commission") is submitted in accordance with Article VI, Section 22, of the Constitution of the State of New York, and Article 2-A of the Judiciary Law as amended effective April 1, 1978, (hereinafter "amended Judiciary Law"), for transmittal by the Chief Judge of the Court of Appeals to the Honorable Duane Algire (hereinafter "respondent").

Respondent is a justice of the Town Court of Barker in Broome County. He is not an attorney. He first took office in January 1975. His current term of office expires on December 31, 1981.

The investigation in this matter was commenced on January 26, 1977, by the former State Commission on Judicial Conduct (hereinafter "former Commission"), pursuant to Section 43, subdivision 2, of the Judiciary Law then in effect (hereinafter "former Judiciary Law"). In the course of its investigation, the former Commission discovered eleven instances in which respondent granted favorable dispositions to defendants in traffic cases pursuant to requests from third parties.

Pursuant to Section 43, subdivision 5, of the former Judiciary Law, the former Commission determined that cause existed to conduct a hearing. On November 25, 1977, respondent was served with a Notice of Hearing and a Formal Written Complaint. An Amended Notice of Hearing and a Supplemental Formal Written Complaint were served on December 27, 1977, copies of which are hereto attached. In his Answer, which was in the form of a letter dated January 11, 1978, a copy of which is hereto attached, respondent admitted all the factual allegations in the Formal Written Complaint and waived his right to a hearing.

Pursuant to Section 43, subdivision 7, of the former Judiciary Law, on March 13, 1978, the former Commission forwarded its Determination of public censure to the Chief Judge of the Court of Appeals, for transmittal by him to respondent. In a letter to the Commission dated March 16, 1978, the Chief Judge stated that it would be improper to transmit the Determination to the respondent, inasmuch as the pertinent provisions of the former Judiciary Law would be in effect only through March 31, 1978.* Consequently, the Determination was not transmitted to respondent.

Section 48 of the amended Judiciary Law provides for the transfer to the Commission and continuance of all matters left pending by the former Commission and for which Courts on the Judiciary had not been convened, as of April 1, 1978.

*The former Judiciary Law provided that a respondent seeking review of a Determination filed by the former Commission could request the convening of a Court on the Judiciary for this purpose within 30 days of receipt of the Determination. The amended Judiciary Law provides that no new Court on the Judiciary could be convened on or after April 1, 1978. Thus, respondent's 30-day privilege to request convening of a Court on the Judiciary would have extended beyond April 1, 1978, the date after which no new Court could have been convened.

This Determination, with findings of fact and conclusions of law as set forth below, is filed by the Commission in accordance with the provisions in Section 44, subdivision 7, of the amended Judiciary Law, for transmittal by the Chief Judge of the Court of Appeals to respondent.

FINDINGS OF FACT

On May 2, 1973, respondent reduced a moving violation to driving with inadequate stop lights in People v. Vito A. Fusillo as a result of a communication he received on behalf of the defendant from Judge Michael A. Perretta of the Town Court of Lenox.

On April 23, 1975, respondent reduced a charge of speeding to driving with an inadequate muffler in People v. Carl E. Linn as a result of a communication he received on behalf of the defendant from Judge Floyd E. Linn of the Town Court of Clay.

On May 2, 1975, respondent reduced a charge of speeding to driving with unsafe tires in People v. Harold J. Forger III as a result of a communication he received on behalf of the defendant from Harold J. Forger, Jr., the defendant's father, the Town Clerk of Geddes.

On August 12, 1975, respondent reduced a charge of speeding to driving with unsafe tires in People v. Stanley Goldberg as a result of a communication he received on behalf of the defendant from Judge Richard Hering of the Town Court of Liberty.

On December 11, 1975, respondent reduced a charge of speeding to driving with unsafe tires in People v. Carol A. Klotz as a result of a communication he received on behalf of the defendant.

On April 8, 1976, respondent reduced a charge of speeding to driving with unsafe tires in People v. Larry J. Cooper as a result of a communication he received on behalf of the defendant.

On April 12, 1976, respondent reduced a charge of speeding to driving with unsafe tires in People v. Joseph Gallo as a result of a communication he received on behalf of the defendant.

On May 16, 1976, respondent reduced a charge of speeding to driving with unsafe tires in People v. C.J. Draves Arpaia as a result of a communication he received on behalf of the defendant.

On September 28, 1976, respondent reduced a charge of speeding to failure to use signal lights in People v. Charles Eppolito as a result of a communication he received on behalf of the defendant from Judge Michael A. Perretta of the Town Court of Lenox.

On January 18, 1977, respondent imposed an unconditional discharge in People v. Joseph R. Kelleher as a result of a communication he received on behalf of the defendant from Deputy Hunkovic.

On August 1, 1977, respondent reduced a charge of speeding to driving with unsafe tires in People v. Joseph J. DiStefano as a result of a communication he received on behalf of the defendant.

CONCLUSIONS OF LAW

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 for reasons that have nothing to do with the circumstances of the case. A judge who accedes to such a request is guilty of favoritism as is the judge who made the request.

By granting favorable dispositions to defendants in traffic cases at the request of third parties, respondent was in violation of Sections 33.1, 33.2, 33.3(a)(1) and 33.3(a)(4) of the Rules Governing Judicial Conduct of the Administrative Board of the Judicial Conference, and Canons 1, 2 and 3A of the Code of Judicial Conduct, which read in part as follows:

Every judge...shall himself observe, high standards of conduct so that the integrity and independence of the judiciary may be preserved. [Section 33.1]

A judge shall respect and comply with the law and shall conduct himself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary. [Section 33.2(a)]

No judge shall allow his family, social or other relationships to influence his judicial conduct or judgment. [Section 33.2(b)]

No judge...shall convey or permit others to convey the impression that they are in a special position to influence him.... [Section 33.2(c)]

A judge shall be faithful to the law and maintain professional competence in it.... [Section 33.3(a) (1)]

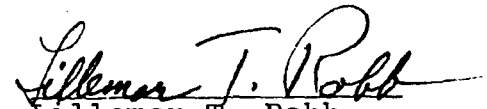
A judge shall...except as authorized by law, neither initiate nor consider ex parte or other communications concerning a pending or impending proceedings.... [Section 33.3(a)(4)]

Courts in this state and other jurisdictions have found that favoritism is serious judicial misconduct and that ticket-fixing (similar if not identical to that activity of respondent) is a form of favoritism.

In Matter of Byrne, N.Y.L.J. April 20, 1978, vol. 179, p.5 (Ct. on the Judiciary), 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." In that case, ticket-fixing was equated with favoritism which the court stated was "wrong and has always been wrong." Id.

DETERMINATION

By reason of the foregoing, in accordance with Article VI, Section 22, of the Constitution of the State of New York, and Section 44, subdivision 7, of the amended Judiciary Law, the State Commission on Judicial Conduct has determined that respondent should be publicly censured.


Lillemor T. Robb
Chairwoman

Dated: New York, New York
December 13, 1978

APPEARANCES:

Collision & Place (By Richard F. Place) for Respondent

Gerald Stern (Barry M. Vucker, Of Counsel) for the Commission