

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

CHARLES W. BARRETT,

a Justice of the Batavia Town Court,
Genesee County.

BEFORE: Mrs. Gene Robb, Chairwoman
Honorable Fritz W. Alexander, II
David Bromberg
Honorable Richard J. Cardamone
Dolores DelBello
Michael M. Kirsch
William V. Maggipinto
Honorable Isaac Rubin
Honorable Felice K. Shea

Respondent, Charles W. Barrett, a Justice of the Town Court of Batavia, Genesee County, was served with a Formal Written Complaint dated May 31, 1979, setting forth four charges of misconduct relating to the improper assertion of influence in traffic cases. Respondent filed an answer dated June 7, 1979.

By notice of motion dated July 16, 1979, the administrator of the Commission moved for summary determination, pursuant to Section 7000.6(c) of the Commission's rules (22 NYCRR 7000.6 [c]). Respondent did not oppose the motion. The Commission granted the motion on August 16, 1979, dismissed Charge II of the Formal Written Complaint, deemed respondent's misconduct established with respect to the remaining three charges, and set a date for

oral argument on the issue of an appropriate sanction. The administrator submitted a memorandum in lieu of oral argument. Respondent waived oral argument and did not submit a memorandum on sanction.

The Commission considered the record in this proceeding on September 27, 1979, and upon that record finds the following facts.

1. As to Charge I, on June 14, 1976, respondent sent a letter to Judge Lawrence H. Schultz, Jr., of the City Court of Batavia, seeking special consideration on behalf of the defendant in People v. David G. Merlin, a case then pending before Judge Schultz.

2. As to Charge III, on October 24, 1975, respondent communicated with Judge Lawrence H. Schultz, Jr., of the City Court of Batavia, seeking special consideration on behalf of the defendant in People v. Carol L. Wells, a case then pending before Judge Schultz.

3. As to Charge IV, on December 8, 1976, respondent reduced a charge of speeding to driving with an unsafe tire in People v. Richard S. Massaro as a result of a written communication he received from Justice Sebastian Lombardi of the Town Court of Lewiston, seeking special consideration on behalf of the defendant.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 33.1, 33.2, 33.3(a)(1) and 33.3(a)(4) of the Rules Governing

Judicial Conduct and Canons 1, 2 and 3A of the Code of Judicial Conduct. Charges I, III and IV of the Formal Written Complaint are sustained, and respondent's misconduct is thereby established.

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. A judge who accedes to such a request is guilty of favoritism, as is the judge who made the request. By making ex parte requests of other judges for favorable dispositions for the defendants in traffic cases, and by granting such requests from judges, respondent violated the rules enumerated above.

Courts in this state and other jurisdictions have found that favoritism is serious judicial misconduct and that ticket-fixing is a form of favoritism.

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

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.


Lillemor T. Robb, Chairwoman
New York State Commission on
Judicial Conduct

Dated: December 12, 1979
Albany, New York

APPEARANCES:

Charles W. Barrett, Respondent *Pro Se*

Gerald Stern for the Commission (Judith Siegel-Baum, Of Counsel)