

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

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In the Matter of the Proceeding :
Pursuant to Section 44, subdivision 4, : COMMISSION
of the Judiciary Law in Relation to : DETERMINATION

HENRY R. BURKE, :

a Judge of the Hornell City Court, :
Steuben County. :

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PRESENT: Mrs. Gene Robb, Chairwoman
Honorable Fritz W. Alexander, II
David Bromberg
Dolores DelBello
Michael M. Kirsch
Victor A. Kovner
William V. Maggipinto
Honorable Isaac Rubin
Honorable Felice K. Shea
Carroll L. Wainwright, Jr.

The respondent, Henry R. Burke, a judge of the Hornell City Court, Steuben County, was served with a Formal Written Complaint dated October 30, 1978, setting forth a charge of misconduct relating to the improper assertion of influence in a traffic case. In his answer, dated November 21, 1978, respondent admitted the material allegations set forth in the Formal Written Complaint.

The administrator of the Commission moved for summary determination on January 17, 1979, pursuant to Section 7000.6(c) of the Commission's Rules (22 NYCRR 7000.6[c]). The Commission

granted the motion on January 24, 1979, finding respondent guilty of misconduct and setting a date for oral argument on the issue of an appropriate sanction. The administrator and respondent submitted memoranda in lieu of oral argument.

The Commission finds as follows:

1. Respondent sent a letter dated September 30, 1976, on official court stationery, to the presiding judge of the Batavia City Court, seeking special consideration on behalf of the defendant in People v. Winfred N. Pryor, a case then pending in the Batavia City Court.

2. In his letter dated September 30, 1976, respondent identified Mr. Pryor as his father-in-law when, in fact, Mr. Pryor is not his father-in-law.

3. By reason of the foregoing, 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.

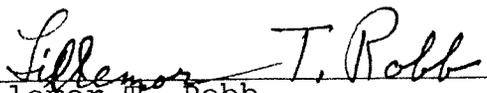
It is improper for a judge to seek to persuade another judge, on the basis of personal or other special influence, to alter or dismiss a traffic ticket. By making an ex parte request of another judge for a favorable disposition for the defendant in a traffic case, respondent violated the Rules enumerated 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 determines that respondent should be admonished.

This determination constitutes the findings of fact and conclusions of law required by Section 44, subdivision 7, of the Judiciary Law.

All concur.


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

Dated: May 29, 1979
Albany, New York

APPEARANCES:

Henry R. Burke, Respondent Pro Se

Gerald Stern for the Commission (Edith Holleman, Of Counsel)