

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

ROY J. BURLEY,

a Justice of the Ogden Town Court,
Monroe County.

Determination

BEFORE: Mrs. Gene Robb, Chairwoman
Dolores DelBello
Michael M. Kirsch
Victor A. Kovner
William V. Maggipinto
Honorable Isaac Rubin
Honorable Felice K. Shea
Carroll L. Wainwright, Jr.

The respondent, Roy Burley, a justice of the Town Court of Ogden, Monroe County, was served with a Formal Written Complaint dated May 2, 1979, setting forth five charges of misconduct relating to the improper assertion of influence in traffic cases. Respondent filed an answer dated May 15, 1979.

By notice of motion dated July 5, 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 July 19, 1979, found respondent guilty of misconduct with respect to all five charges in the Formal Written Complaint, 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 August 16, 1979, and upon that record finds the following facts.

1. As to Charge I, on January 9, 1973, respondent reduced a charge of failing to stop for a stop sign to driving with an inadequate muffler in People v. Paul A. Carlo as a result of a communication he received from Justice Bob Hall of the Town Court of Sweden, or someone at Judge Hall's request, seeking special consideration on behalf of the defendant.

2. As to Charge II, on March 22, 1973, respondent sent a letter to the Justice of the Town Court of Greece, seeking special consideration on behalf of the defendant in People v. Vera Fishbaugh, a case then pending in that court.

3. As to Charge III, on May 6, 1974, respondent sent a letter to the Justice of the Town Court of Riga, seeking special consideration on behalf of the defendant in People v. John E. Kerekavich, a case then pending in that court.

4. As to Charge IV, on May 7, 1974, respondent sent a letter to Justice Claude Barclay of the Town Court of Palma, seeking special consideration on behalf of the defendant in People v. Douglas F. Taylor, a case then pending before Judge Barclay.

5. As to Charge V, on March 9, 1976, respondent sent a letter to the Justice of the Town Court of Alden seeking special consideration on behalf of the defendant in People v. Harold W. Way, a case then pending in that court.

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 through V of the Formal Written Complaint are sustained, and respondent is thereby guilty of misconduct.

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 a request, respondent violated the Rules enumerated above, 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)]

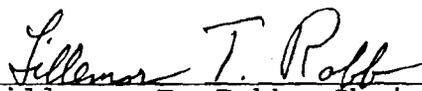
Courts in this state and other jurisdictions have found that favoritism is serious judicial misconduct and that ticket-fixing is a form of favoritism.

In Matter of Byrne, N.Y.L.J. Apr. 20, 1978, p. 5 (Ct. on the Judiciary, Apr. 18, 1978), the court 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.

By reason of the foregoing, the Commission determines by vote of 7 to 1 that the appropriate sanction is censure. Judge Rubin dissents only with respect to sanction and votes 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: October 11, 1979
Albany, New York

APPEARANCES:

Roy J. Burley, Respondent *Pro Se*

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