

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

PHILIP S. CAPONERA,

Determination

a Justice of the Town Court of
Colonie, Albany County.

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

APPEARANCES:

Gerald Stern (Jack J. Pivar, Of Counsel) for the
Commission

William J. Cade for Respondent

The respondent, Philip S. Caponera, a justice of the Town Court of Colonie, Albany County, was served with a Formal Written Complaint dated July 16, 1979, alleging misconduct with respect to seven traffic cases and related matters. Respondent filed an answer dated September 7, 1979.

By order dated March 6, 1980, the Commission designated Bruno Colapietro, Esq., as referee to hear and report proposed

findings of fact and conclusions of law. The hearing was conducted on June 6, 1980, and the report of the referee was filed on October 16, 1980.

By motion dated December 22, 1980, the administrator of the Commission moved to confirm the referee's report and for a determination that respondent be censured. Respondent did not oppose the motion. Oral argument was not requested.

The Commission considered the record of this proceeding on January 21, 1981, and makes the following findings of fact.

1. Respondent serves part-time as town court justice of Colonie and is an attorney permitted to practice in the State of New York.

2. Charge I: On April 7, 1976, respondent sent a letter on official town stationery to Niskayuna Town Court Justice Theodore Reinhard, seeking special consideration on behalf of the defendant in People v. James Gillis, a case then pending before Judge Reinhard.

3. Charge II: On December 8, 1975, respondent sent a letter on official town stationery to New York Mills Village Justice Michael Cienava, seeking special consideration on behalf of the defendant, who was the nephew of one of respondent's law practice clients, in People v. Michael J. Costello, a case then pending before Judge Cienava.

4. Charge III: On August 29, 1975, respondent sent a letter to Moreau Town Court Justice Robert Vines, confirming a telephone conversation in which respondent had sought special consideration on behalf of the defendant, his client, in People v. Jeff

DiStefano, a case then pending before Judge Vines.

5. Charge IV: On September 3, 1976, respondent sent a letter on official town stationery to Guilderland Town Court Justice Mathew Mataraso, seeking special consideration on behalf of the defendant, his client, in People v. Darcy Belgiano, a case then pending before Judge Mataraso.

6. Charge V: On September 7, 1976, respondent sent a letter on official town stationery to Albany City Traffic Court Judge John E. Holt-Harris, seeking special consideration on behalf of the defendant, a friend of respondent's, in People v. Eugene Audi, a case then pending before Judge Holt-Harris.

7. Charge VI: On October 13, 1976, respondent sent a letter to Queensbury Town Court Justice James Davidson, seeking special consideration on behalf of the defendant, a friend of respondent's, in People v. James Burkhard, a case then pending before Judge Davidson.

8. Charge VIII: Between January 1974 and November 1976, the clerks of the Town Court of Colonie, with respondent's general knowledge but without his consent in individual cases, made it a practice to reduce certain speeding cases to lesser charges, enter dispositions and stamp respondent's name in court docket books. Respondent thereby improperly delegated his judicial responsibilities to the clerks and failed in his obligation to supervise his court personnel.

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), 33.3(a)(4) and 33.3(b)(1) of the Rules Governing Judicial Conduct and Canons 1, 2, 3A and 3B of the Code of Judicial Conduct. Charges I through VI and Charge VIII of the Formal Written Complaint are sustained and respondent's misconduct is established.

Charge VII of the Formal Written Complaint is not sustained and therefore is dismissed.

It is improper for a judge to seek to persuade another judge, on the basis of personal or other special influence, to grant special consideration to a defendant. By making ex parte requests of other judges for favorable dispositions for defendants in traffic cases, 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 33.3(a)]

No judge shall allow his family, social or other relationship 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 and other states, as well as the Commission, have found that favoritism is serious judicial misconduct and that ticket-fixing is a form of favoritism.

In Matter of Byrne, 47 NY2d(b) (Ct. on the Judiciary 1979), 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. at (c).

As an experienced lawyer, respondent should have been fully aware of the applicable standards of conduct, both with respect to his requests to other judges for special consideration for others, including his own clients, and his improper delegation to the clerks of the town court of judicial responsibilities reposed solely in him.

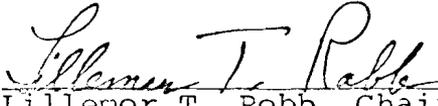
By reason of the foregoing, the Commission determines that the appropriate sanction is censure.

All concur.

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: April 21, 1981
Albany, New York


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