

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

HARVEY W. CHASE,

a Justice of the Cicero Town Court,
Onondaga County.

Determination

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

Respondent, a justice of the Town Court of Cicero,
Onondaga County, was served with a Formal Written Complaint dated
February 2, 1979, setting forth seven charges relating to the
improper assertion of influence in traffic cases. Respondent
filed an amended answer dated September 19, 1979.

By notice dated October 12, 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]). Respon-
dent did not oppose the motion. The Commission granted the motion
on October 25, 1979, found respondent's misconduct established
with respect to all seven 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 but submitted a letter from his attorney on the issue of sanction.

The Commission considered the record in this proceeding on December 13, 1979, and upon that record makes the following findings of fact.

1. As to Charge I, on June 30, 1974, respondent, or someone at his request, communicated with Justice Harry H. Bushnell of the Town Court of Sullivan, seeking special consideration on behalf of the defendant in People v. David E. Rankin, a case then pending before Judge Bushnell.

2. As to Charge II, on March 8, 1976, respondent reduced a charge of speeding to failing to keep right in People v. Peter Bogdanski as a result of a written communication he received from Justice Frank L. Giza of the Town Court of Wawayanda, seeking special consideration on behalf of the defendant.

3. As to Charge III, on May 1, 1974, respondent reduced a charge of failing to stop for a stop sign to driving with an inadequate muffler in People v. Donald E. Banks as a result of a communication he received from Police Chief William Slattery, or someone at Chief Slattery's request, seeking special consideration on behalf of the defendant.

4. As to Charge IV, on May 1, 1974, respondent reduced a charge of passing a red light to driving with an inadequate muffler in People v. Alan W. Humphreys as a result of a communication he received from Police Chief William Slattery, or someone at Chief Slattery's request, seeking special consideration on behalf of the defendant.

5. As to Charge V, on February 10, 1976, respondent reduced a charge of speeding to driving with an inadequate muffler in People v. Anthony N. Mustille as a result of a communication he received from Justice William B. Van Nostrand of the Town Court of Ovid, or someone at Judge Van Nostrand's request, seeking special consideration on behalf of the defendant.

6. As to Charge VI, on February 24, 1975, respondent reduced a charge of speeding to driving with an unsafe tire in People v. Virgil L. Patchen as a result of a communication he received from Justice Peter V.N. Bodine of the Town Court of Waterloo, or someone at Judge Bodine's request, seeking special consideration on behalf of the defendant.

7. As to Charge VII, on March 3, 1976, respondent reduced a charge of speeding to driving with an inadequate muffler in People v. David I. Phelps as a result of a communication he received from Justice H. Lee Gill of the Town Court of Orleans or someone at Judge Gill's request, 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 through VII of the Formal Written Complaint are sustained, and respondent's misconduct is 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 an ex parte request of another judge for a favorable disposition for a defendant in a traffic case, and by granting such requests from judges and other persons of influence, 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.

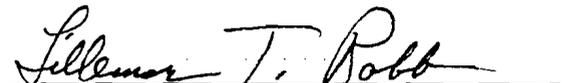
In Matter of Byrne, 420 NYS2d 70 (Ct. on the Judiciary 1978), the court declared that a "judicial officer who accords or requests special treatment or favoritism to a defendant in his court or another judge's court is guilty of malum in se misconduct constituting cause for discipline." In that case, ticket-fixing was equated with favoritism, which the court stated was "wrong and has always been wrong." Id. at 71-72.

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.


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

Dated: March 11, 1980
Albany, New York

APPEARANCES:

Gerald Stern (Robert H. Straus, Of Counsel) for the Commission

Richard V. Hunt for Respondent