

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

JAMES H. CORKLAND,

a Justice of the Lake George Town
Court, Warren County.

Determination

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

Respondent, a justice of the Town Court of Lake George, Warren County, was served with a Formal Written Complaint dated July 18, 1979, setting forth 51 charges relating to the improper assertion of influence in traffic cases. Respondent filed an answer dated August 25, 1979.

By notice dated October 17, 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 November 13, 1979, found respondent's misconduct established with respect to all 51 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 submitted a letter on 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 January 3, 1973, respondent reduced a charge of speeding to driving with inadequate directional signals in People v. Leonard T. Sample as a result of a written communication he received from Justice William Begor of the Town Court of Mooers, seeking special consideration on behalf of the defendant.

2. As to Charge II, on December 6, 1976, respondent reduced a charge of speeding to driving with an inadequate muffler in People v. Percy Drovin as a result of communications he received from Justice Wayde Earl of the Village Court of Lake George and Justice Ronald MacKenzie of the Town Court of North Elba or someone at their request, seeking special consideration on behalf of the defendant.

3. As to Charge III, on December 19, 1973, respondent reduced a charge of speeding to driving with an inadequate muffler in People v. Clifford Belden as a result of a communication he received from Justice Fred DeVries of the Town Court of Warrensburg, or someone at Judge DeVries request, seeking special consideration on behalf of the defendant.

4. As to Charge IV, on April 16, 1975, respondent reduced a charge of passing a stop sign to driving with an inadequate muffler in People v. Raymond Ciccarelli as a result of a written communication he received from Justice Angelo Root of the Town Court of Bolton, seeking special consideration on behalf of the defendant.

5. As to Charge V, on February 18, 1977, respondent reduced a charge of speeding to failure to keep right in People v. Susan McGinn as a result of a communication he received from Justice Kenneth Fitzgerald of the Village Court of Schuylerville, seeking special consideration on behalf of the defendant.

6. As to Charge VI, on April 20, 1977, respondent reduced a charge of speeding to driving with unsafe tires in People v. Robert McKie as a result of a written communication he received from Carl DeSantis, Warren County Republican Chairman, seeking special consideration on behalf of the defendant.

7. As to Charge VII, on December 15, 1976, respondent reduced a charge of speeding to driving with unsafe tires and imposed an unconditional discharge in People v. Martin Chase as a result of a written communication he received from Justice Charles Leggett of the Town Court of Chester, seeking special consideration on behalf of the defendant.

8. As to Charge VIII, on April 27, 1976, respondent reduced a charge of speeding to failure to keep right in People v. Carl Graziane as a result of a written communication he received from Justice Charles Persons of the Town Court of Florida, seeking special consideration on behalf of the defendant.

9. As to Charge IX, on October 27, 1976, respondent reduced a charge of speeding to driving with unsafe tires in People v. Paul Schaefer as a result of a communication he received from Justice Wayde Earl of the Village Court of Lake George, or someone at his request, seeking special consideration on behalf of the defendant.

10. As to Charge X, on January 5, 1976, respondent reduced a charge of speeding to driving with an inadequate muffler in People v. Truman Davis as a result of a communication he received from Justice Joseph Johnson of the Town Court of North Hudson, seeking special consideration on behalf of the defendant.

11. As to Charge XI, on January 5, 1973, respondent reduced a charge of speeding to driving with inadequate directional signals in People v. Raymond Bauer as a result of a written communication he received from Justice Wilfred Doolittle of the Town Court of Rosendale, seeking special consideration on behalf of the defendant.

12. As to Charge XII, on July 21, 1975, respondent reduced a charge of speeding to driving with inadequate directional signals and imposed an unconditional discharge in People v. Russell Hunt as a result of a written communication he received from Justice George Roland of the Town Court of Colonie, seeking special consideration on behalf of the defendant.

13. As to Charge XIII, on January 11, 1977, respondent reduced a charge of speeding to failure to keep right in People v. Joseph Kilburn as a result of a written communication he received from Justice Ronald Bailey of the Town Court of Chesterfield, seeking special consideration on behalf of the defendant.

14. As to Charge XIV, on June 25, 1975, respondent imposed an unconditional discharge in People v. Roland Saucier as a result of a written communication he received from Justice Philip Drollette of the Town Court of Plattsburgh, seeking special consideration on behalf of the defendant.

15. As to Charge XV, on February 25, 1976, respondent reduced a charge of speeding to failure to keep right in People v. Leonard O'Sullivan as a result of a written communication he received from Justice Philip Drollette of the Town Court of Plattsburgh, seeking special consideration on behalf of the defendant.

16. As to Charge XVI, on April 7, 1976, respondent reduced a charge of speeding to unnecessary smoke in People v. Amarjit Gill as a result of a communication he received from Justice William Foltman of the Town Court of Princetown, seeking special consideration on behalf of the defendant.

17. As to Charge XVII, on September 19, 1974, respondent reduced a charge of speeding to failure to keep right in People v. Josephine Burgess as a result of a written communication he received from Justice Sylvester Albano of the Town Court of Coeymans, seeking special consideration on behalf of the defendant.

18. As to Charge XVIII, on July 2, 1974, respondent reduced a charge of speeding to driving with unsafe tires and imposed an unconditional discharge in People v. Thomas Cholakis as a result of a written communication he received from Ralph Brown, Lake George Town Court Clerk, seeking special consideration on behalf of the defendant.

19. As to Charge XIX, on December 13, 1976, respondent reduced a charge of speeding to driving with inadequate directional signals in People v. Eugene A. Murphy as a result of a communication he received from New York State Assemblyman Gerald B. Solomon, seeking special consideration on behalf of the defendant.

20. As to Charge XX, on February 12, 1975, respondent reduced a charge of speeding to failure to keep right in People v. Jon Martin as a result of a communication he received from New York State Assemblyman Andrew W. Ryan, Jr., seeking special consideration on behalf of the defendant.

21. As to Charge XXI, on April 23, 1975, respondent reduced a charge of speeding to unnecessary smoke in People v. George Castiglione as a result of a communication he received from Gary Schermerhorn, seeking special consideration on behalf of the defendant.

22. As to Charge XXII, on May 7, 1975, respondent reduced a charge of speeding to driving with an inadequate muffler in People v. Donald McIntyre as a result of a written communication he received from the defendant, who identified himself as the Mayor and Police Chief of the Village of Westport, seeking special consideration.

23. As to Charge XXIII, on November 16, 1973, respondent reduced a charge of speeding to driving with unsafe tires in People v. Charles R. Lord as a result of a communication he received seeking special consideration on behalf of the defendant.

24. As to Charge XXIV, on August 6, 1975, respondent reduced a charge of speeding to driving with an inadequate muffler in People v. John Poole as a result of a communication he received from Robert Flacke, Town Supervisor of Lake George and an official of the Adirondack Park Agency, or someone at Mr. Flacke's request, seeking special consideration on behalf of the defendant.

25. As to Charge XXV, on March 25, 1975, respondent reduced a charge of passing a red light to driving with inadequate directional signals in People v. Earl Bump as a result of a communication he received from Robert Flacke, Town Supervisor of Lake George and an official of the Adirondack Park Agency, or someone at Mr. Flacke's request, seeking special consideration on behalf of the defendant.

26. As to Charge XXVI, on March 26, 1975, respondent reduced a charge of speeding to driving with unsafe tires in People v. John Buyce as a result of a communication he received from Robert Flacke, Town Supervisor of Lake George and an official of the Adirondack Park Agency, or someone at Mr. Flacke's request, seeking special consideration on behalf of the defendant.

27. As to Charge XXVII, on June 12, 1974, respondent reduced a charge of speeding to driving with no horn in People v. Edwin Baker, Jr. as a result of a written communication he received from Robert Flacke, Town Supervisor of Lake George and

an official of the Adirondack Park Agency, seeking special consideration on behalf of the defendant.

28. As to Charge XXVIII, on May 28, 1975, respondent reduced a charge of speeding to driving with inadequate directional signals in People v. Frank Malinoski as a result of a written communication he received from Trooper R.H. Manss, seeking special consideration on behalf of the defendant.

29. As to Charge XXIX, on March 11, 1974, respondent reduced a charge of speeding to driving with an inadequate muffler in People v. Donald Vincent as a result of a written communication he received from Charles B. Wheeler, Crime Control Coordinator, Lake Champlain Lake George Regional Planning Board, seeking special consideration on behalf of the defendant.

30. As to Charge XXX, on April 4, 1977, respondent reduced a charge of speeding to driving with an inadequate muffler in People v. William Dee, Jr. as a result of a written communication he received from Ralph Brown, Lake George Town Court Clerk, seeking special consideration on behalf of the defendant.

31. As to Charge XXXI, on July 16, 1975, respondent reduced a charge of speeding to driving with unsafe tires in People v. Harrison Karp as a result of a written communication he received from Lieutenant Andrew DeLuca of the Schenectady Police Department, or someone at Lieutenant DeLuca's request, seeking special consideration on behalf of the defendant.

32. As to Charge XXXII, on February 17, 1976, respondent reduced a charge of speeding to passing a red light and imposed an

unconditional discharge in People v. Marjorie Swan as a result of a written communication he received from Howard Swan, Chester Town Supervisor, seeking special consideration on behalf of the defendant.

33. As to Charge XXXIII, on May 17, 1974, respondent reduced a charge of speeding to driving with an inadequate muffler in People v. Charles A. Leonelli as a result of a written communication he received from Trooper W.W. Pearson, seeking special consideration on behalf of the defendant.

34. As to Charge XXXIV, on July 11, 1975, respondent reduced a charge of speeding to driving with an inadequate muffler in People v. John Desidoro as a result of a communication he received from State Police Investigator J.J. Wood, or someone at Investigator Wood's request, seeking special consideration on behalf of the defendant.

35. As to Charge XXXV, on August 20, 1975, respondent reduced a charge of speeding to failure to keep right in People v. Albert Bailey, Jr. as a result of a communication he received from Investigator C. Fountain, or someone at Investigator Fountain's request, seeking special consideration on behalf of the defendant.

36. As to Charge XXXVI, on November 10, 1976, respondent reduced a charge of speeding to driving with an inadequate muffler in People v. David Slutzky as a result of a communication he received from State Police Sergeant Bentley, or someone at Sergeant Bentley's request, seeking special consideration on behalf of the defendant.

37. As to Charge XXXVII, on November 23, 1976, respondent reduced a charge of speeding to driving with inadequate directional signals in People v. Carmelo Panzera as a result of a communication he received from Trooper Devine, or someone at Trooper Devine's request, seeking special consideration on behalf of the defendant.

38. As to Charge XXXVIII, on November 18, 1976, respondent reduced a charge of speeding to driving with unsafe tires and imposed an unconditional discharge in People v. George R. Pensel as a result of a communication he received from Trooper Deull, or someone at Trooper Duell's request, seeking special consideration on behalf of the defendant.

39. As to Charge XXXIX, on June 28, 1977, respondent reduced a charge of speeding to driving with inadequate directional signals in People v. Gladys Andrews as a result of a written communication he received on behalf of the defendant.

40. As to Charge XL, on June 18, 1975, respondent reduced a charge of speeding to failure to keep right in People v. Curtis Dettling as a result of a communication he received from Trooper Harry Sealy, or someone at Trooper Sealy's request, seeking special consideration on behalf of the defendant.

41. As to Charge XLI, on March 8, 1977, respondent reduced a charge of speeding to driving with an inadequate muffler in People v. Martin Hapgood as a result of a communication he received from Trooper Hamchett, or someone at Trooper Hamchett's request, seeking special consideration on behalf of the defendant.

42. As to Charge XLII, on February 23, 1977, respondent reduced a charge of speeding to driving with an inadequate muffler and imposed an unconditional discharge in People v. Thomas E. McMahon as a result of a written communication he received from Ralph Brown, Lake George Town Court Clerk, seeking special consideration on behalf of the defendant.

43. As to Charge XLIII, on January 10, 1973, respondent reduced a charge of speeding to driving with an inadequate muffler in People v. Nicholas J. Schoendorf as a result of a written communication he received from Trooper W.G. Murray, seeking special consideration on behalf of the defendant.

44. As to Charge XLIV, on June 18, 1973, respondent reduced a charge of speeding to driving with inadequate directional signals in People v. Lynne Root as a result of a communication he received from Trooper P.J. Nadig, or someone at Trooper Nadig's request, seeking special consideration on behalf of the defendant.

45. As to Charge XLV, on June 24, 1974, respondent reduced a charge of speeding to driving with inadequate directional signals in People v. Robert Parkinson as a result of a written communication he received from Bill Kiernan, seeking special consideration on behalf of the defendant.

47. As to Charge XLVII, on February 12, 1975, respondent reduced a charge of speeding to driving with unsafe tires in People v. Timothy Fiato as a result of written communications he received from Gary Schermerhorn, aide to State Senator Ronald Stafford, and Hugh Gilbert, seeking special consideration on behalf of the defendant.

48. As to Charge XLVIII, on February 3, 1977, respondent reduced a charge of speeding to driving with unsafe tires in People v. Mickey J. Carpenter as a result of a written communication he received from Gary Schermerhorn, aide to State Senator Ronald Stafford, seeking special consideration on behalf of the defendant.

49. As to Charge XLIX, on February 18, 1976, respondent reduced a charge of speeding to driving with unsafe tires in People v. Ray Hayes as a result of a written communication he received from Thomas E. Durkish, elementary principal at North Warren Central School, seeking special consideration on behalf of the defendant.

50. As to Charge L, on November 23, 1976, respondent reduced a charge of speeding to driving with an inadequate muffler in People v. Ronald W. Cook as a result of a communication he received seeking special consideration on behalf of the defendant.

51. As to Charge LI, on January 31, 1977, respondent reduced a charge of speeding to driving with unsafe tires in People v. Walter Doyle as a result of a communication he received from Justice Robert Vines of the Town Court of Moreau, 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, Canons 1, 2 and 3A of the Code of Judicial

Conduct and Canons 4, 5, 13, 14, 17 and 34 of the Canons of Judicial Ethics. Charges I through LI 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 granting ex parte requests from judges and other persons of influence, including his court clerk, 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 33.2(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.

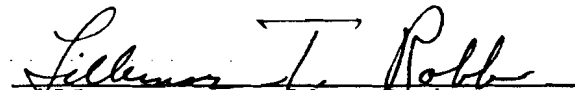
In Matter of Bryne, 420 NYS2d 70 (Ct. on the Judiciary 1978), the court declared that a "judicial officer who accords or requests special treatment or favoritism to a defendant in his court or another judge's court is guilty of malum in se misconduct constituting cause for discipline." In that case, 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. Mr. Kirsch concurs in accord with his concurring opinion in Matter of Haberneck, NYLJ Aug. 10, 1979, p. 12, col. 5, (Com. on Jud. Conduct, July 10, 1979).

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: April 1, 1980
Albany, New York

APPEARANCES:

Gerald Stern (Jeanne A. O'Connor, Of Counsel) for the Commission
James H. Corkland, Respondent Pro Se