

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

PATRICK J. CUNNINGHAM,

a Judge of the County Court,
Onondaga County.

Determination

BEFORE: Mrs. Gene Robb, Chairwoman
David Bromberg
Honorable Richard J. Cardamone
Dolores DelBello
Michael M. Kirsch
William V. Maggipinto
Honorable Isaac Rubin
Honorable Felice K. Shea
Carroll L. Wainwright, Jr.

Respondent, a judge of the County Court, Onondaga County,
was served with a Formal Written Complaint dated March 27, 1979,
setting forth two charges relating to the improper assertion of
influence in traffic cases. Respondent filed an answer dated
April 17, 1979.

On November 21, 1979, the administrator of the Commission,
respondent and respondent's counsel entered into an agreed state-
ment of facts, pursuant to Section 44, subdivision 5, of the Judiciary
Law, waiving the hearing provided for in Section 44, subdivision 4,
of the Judiciary Law, and stipulating that the Commission make
its determination upon the pleadings and the facts as agreed upon.
The Commission approved the agreed statement of facts, as submitted,

on December 12, 1979, determined that no outstanding issue of fact remained, and scheduled oral argument with respect to determining (i) whether the facts establish misconduct and (ii) an appropriate sanction, if any.

Both the administrator and respondent submitted a memorandum on the issue of sanction. On January 23, 1980, after hearing oral argument, the Commission, in executive session, considered the record in this proceeding and upon that record makes the following findings of fact.

Charge I: Respondent sent a letter on his judicial stationery to Justice James E. Jerome of the Town Court of Geddes, seeking special consideration on behalf of the defendant in People v. Kenneth P. Williams, a case then pending before Judge Jerome. The defendant is an acquaintance of respondent who worked in respondent's election campaign for county 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. Charge I of the Formal Written Complaint is sustained, and respondent's misconduct is established.

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

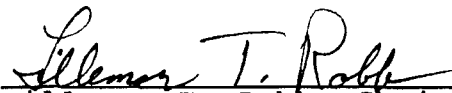
It is improper for a judge to seek to persuade another judge, on the basis of personal or other special influence, to alter or dismiss a traffic ticket. Respondent is a judge who sits full-time in a court of record and was obliged to know that his conduct was improper. By making an ex parte request of another judge for a favorable disposition for a defendant in a traffic case, respondent violated the Rules enumerated above.

Courts in this and other states 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 by vote of 8 to 1 that the appropriate sanction is admonition. Mr. Kirsch dissents only with respect to sanction, and votes that a letter of dismissal and caution be sent to respondent.

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 Judiciary Law.


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

Dated: March 26, 1980
Albany, New York

APPEARANCES:

Gerald Stern (Alan W. Friedberg, Of Counsel) for the Commission
Leonard H. Amdursky for Respondent