

Judiciary Law, waiving the hearing provided for by Section 44, subdivision 4, of the Judiciary Law and stipulating that the Commission make its determination on the pleadings and the facts as agreed upon. The Commission approved the agreed statement on May 21, 1979, determined that no outstanding issue of fact remained, and scheduled oral argument with respect to determining (i) whether to make a finding of misconduct and (ii) an appropriate sanction, if any. The administrator and respondent submitted memoranda in lieu of oral argument.

The Commission considered the record in this proceeding on June 21, 1979, and upon that record finds the following facts:

1(a) On September 15, 1975, respondent communicated with Ralph Brown, clerk of the Lake George Town Court, with respect to People v. Verna Bain, a case then pending before Justice Robert Radloff of the Lake George Town Court.

(b) Respondent had previously been a justice of the Lake George Town Court. Mr. Brown, who had been clerk of that court when respondent had been a justice of that court, was well known to respondent.

(c) Respondent told Mr. Brown that the defendant in People v. Verna Bain was a friend of his and was concerned about losing her special license plates if convicted.

(d) Respondent asked Mr. Brown to speak with Judge Radloff to ascertain whether a conviction for speeding could be avoided. Mr. Brown told respondent he would talk to Judge Radloff about the matter and ascertain whether Judge Radloff would consider a reduction.

(e) Judge Radloff's disposition of People v. Verna Bain was based upon the request from respondent.

2(a) On June 6, 1975, respondent spoke by telephone to Justice John Carusone of the Queensbury Town Court with respect to People v. Donald G. McElroy, a case then pending before Judge Carusone. Respondent stated that he was acquainted with the defendant, who would appreciate not receiving a mark on his driver's license if Judge Carusone felt the defendant was entitled to judicial leniency.

(b) On June 6, 1975, respondent sent a letter to Judge Carusone, stating that the defendant in People v. Donald G. McElroy "would very much appreciate an equipment violation."

(c) Judge Carusone's disposition of People v. Donald G. McElroy was not based upon the merits but upon the communications he received from respondent.

Based 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 and II 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 makes such a request is guilty of favoritism, as is the judge who accedes to the request. By making requests 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 Byrne, N.Y.L.J. April 20, 1978, vol. 179, p. 5 (Ct. on the Judiciary), the Court on the Judiciary 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 that the appropriate sanction is censure.

Mrs. Robb, Mr. Kirsch and Judge Rubin dissent only with respect to sanction and vote that the appropriate sanction is admonition.

This determination constitutes the findings of fact and conclusions of law required by Section 44, subdivision 7, of the Judiciary Law.

Dated: July 10, 1979

APPEARANCES:

Bacas, Krogman & Nikas (By David B. Krogman) for Respondent

Gerald Stern for the Commission (Edith Holleman, Of Counsel)