

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

----- X
In the Matter :
- of - :
WILFRED DOOLITTLE, :
a Justice of the Town Court :
of Rosendale, Ulster County. :
----- X

DETERMINATION

STATE COMMISSION ON
JUDICIAL CONDUCT

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PRELIMINARY STATEMENT

This Determination of the State Commission on Judicial Conduct (hereinafter the "Commission") is submitted in accordance with Article VI, Section 22, of the Constitution of the State of New York, and Article 2-A of the Judiciary Law as amended effective April 1, 1978, (hereinafter "amended Judiciary Law"), for transmittal by the Chief Judge of the Court of Appeals to the Honorable Wilfred Doolittle (hereinafter "respondent").

Respondent is currently a justice of the Town Court of Rosendale in Ulster County. He is not an attorney. His current term commenced on January 1, 1978, and expires on December 31, 1981. From 1949 to December 31, 1977, respondent was a justice of the Village Court of Rosendale. The misconduct cited in the findings of fact below occurred during the period that respondent served as justice of the Village Court.

The investigation in this matter was commenced on May 25, 1977, by the former State Commission on Judicial Conduct (hereinafter "former Commission"), pursuant to Section 43, subdivision 2, of the Judiciary Law then in effect (hereinafter "former Judiciary Law"). In the course of its investigation, the former Commission discovered six instances in which respondent made ex parte requests of other judges for favorable dispositions for defendants in traffic cases.

Pursuant to Section 43, subdivision 5, of the former Judiciary Law, the former Commission determined that cause existed to conduct a hearing. On November 25, 1977, respondent was served with a Notice of Hearing and a Formal Written Complaint, copies of which are hereto attached. In his Answer, which was in the form of a letter dated December 5, 1977, a copy of which is hereto attached, respondent admitted all the factual allegations in the Formal Written Complaint. In a letter from respondent's attorney dated February 7, 1978, a copy of which is hereto attached, respondent waived his right to a hearing.

Pursuant to Section 43, subdivision 7, of the former Judiciary Law, on March 13, 1978, the former Commission forwarded its Determination of public censure to the Chief Judge of the Court of Appeals, for transmittal by him to respondent. In a letter to the Commission dated March 16, 1978, the Chief Judge stated that it would be improper to transmit the Determination to the respondent, inasmuch as the pertinent provisions of the

former Judiciary Law would be in effect only through March 31, 1978.* Consequently, the Determination was not transmitted to respondent.

Section 48 of the amended Judiciary Law provides for the transfer to the Commission and continuance of all matters left pending by the former Commission and for which Courts on the Judiciary had not been convened, as of April 1, 1978.

This Determination, with findings of fact and conclusions of law as set forth below, is filed by the Commission in accordance with the provisions in Section 44, subdivision 7, of the amended Judiciary Law, for transmittal by the Chief Judge of the Court of Appeals to respondent.

FINDINGS OF FACT

On January 30, 1973, respondent sent a letter, in which he identifies himself as a judge, to Judge Angelo Darrigo of the Town Court of Newburgh, requesting favorable treatment for the defendant, who was charged with failure to keep right, in People v. Markle, a case then pending before Judge Darrigo.

On October 23, 1973, respondent sent a letter, in which he identifies himself as a judge, to the City Traffic Court of Albany, requesting a favorable disposition for the defendant, who was charged with operating a motor vehicle without a valid

* The former Judiciary Law provided that a respondent seeking review of a Determination filed by the former Commission could request the convening of a Court on the Judiciary for this purpose within 30 days of receipt of the Determination. The amended Judiciary Law provides that no new Court on the Judiciary could be convened on or after April 1, 1978. Thus, respondent's 30-day privilege to request convening of a Court on the Judiciary would have extended beyond April 1, 1978, the date after which no new Court could have been convened.

inspection certificate, in People v. Frank R. Sorbello, a case then pending before Judge John C. Holt-Harris of that court.

On April 16, 1974, respondent sent a letter to Judge George Carl of the Town Court of Catskill on behalf of the defendant, who was charged with speeding, in People v. Heinz Bracklow, a case then pending before Judge Carl. In his letter respondent referred to a prior telephone conversation he had held with Judge Carl, enclosing a check for \$10.00 and stating: "Thank you for the reduction...."

On October 31, 1975, respondent sent a letter to Judge Wayne Smith of the Town Court of Plattekill, requesting favorable treatment for the defendant, who was charged with speeding, in People v. Frank J. Parone, Jr., a case then pending before Judge Smith.

On December 16, 1975, respondent, or someone at his request, communicated with Judge Judson Wright of the Town Court of Coxsackie on behalf of the defendant in People v. Martin P. Stallone, a case then pending before Judge Wright.

On March 26, 1976, respondent, or someone at his request, communicated with Judge Arthur A. Reilly of the Town Court of Ulster on behalf of the defendant, who was charged with speeding, in People v. Paul Liguori, a case then pending before Judge Reilly.

CONCLUSIONS OF LAW

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 for reasons that have nothing to do with the circumstances of the case. A judge who accedes to such a request is guilty of favoritism as is the judge who made the request.

By making ex parte requests of other judges for favorable dispositions for defendants in traffic cases, respondent was in violation of Sections 33.1, 33.2, 33.3(a)(1) and 33.3(a)(4) of the Rules Governing Judicial Conduct of the Administrative Board of the Judicial Conference, and Canons 1, 2 and 3A of the Code of Judicial Conduct, 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)]

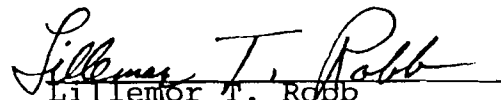
A judge shall...except as authorized by law, neither initiate nor consider ex parte or other communications concerning a pending or impending proceedings.... [Section 33.3(a)(4)]

Courts in this state and other jurisdictions have found that favoritism is serious judicial misconduct and that ticket-fixing (similar if not identical to that activity of respondent) 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.

DETERMINATION

By reason of the foregoing, in accordance with Article VI, Section 22, of the Constitution of the State of New York, and Section 44, subdivision 7, of the amended Judiciary Law, the State Commission on Judicial Conduct has determined that respondent should be publicly censured.


Lillemor T. Robb
Chairwoman

Dated: New York, New York
December 13, 1978

APPEARANCES:

William P. Curran for Respondent

Gerald Stern (Stephen F. Downs, Of Counsel) for the Commission