

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

WAYDE EARL,

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

Determination

BEFORE: Mrs. Gene Robb, Chairwoman
Honorable Fritz W. Alexander, II
David Bromberg, Esq.
Dolores DelBello
Michael M. Kirsch, Esq.
William V. Maggipinto, Esq.
Honorable Isaac Rubin
Honorable Felice K. Shea
Carroll L. Wainwright, Jr., Esq.

APPEARANCES:

Gerald Stern (Jack J. Pivar, Of
Counsel) for the Commission

Honorable Wayde Earl, Respondent
Pro Se

The respondent, Wayde Earl, a justice of the Village Court of Lake George, Warren County, was served with a Formal Written Complaint dated June 26, 1979, alleging three charges of improper influence in traffic cases. Respondent filed an answer dated July 12, 1979.

By order dated September 4, 1979, the Commission designated the Honorable Raymond Reisler as referee to hear and report proposed findings of fact and conclusions of law. The hearing

was held on November 27, 1979. The referee filed his report to the Commission on June 20, 1980.

By motion dated August 15, 1980, the administrator of the Commission moved to confirm the report of the referee and for a determination that respondent be censured. Respondent did not oppose the motion. Oral argument was not requested. The Commission considered the record of this proceeding on September 17, 1980, and upon that record makes the following findings of fact.

1. Charge I: On August 7, 1975, respondent sent a letter to Justice Robert Vines of the Town Court of Moreau, confirming an earlier telephone conversation and seeking special consideration on behalf of the defendant in People v. Todd Earl, a case then pending before Judge Vines. The defendant Todd Earl is respondent's son.

2. Charge II: On November 24, 1976, respondent telephoned Ralph E. Brown, Clerk of the Town Court of Lake George, seeking special consideration for the defendant in People v. Percy Drovin, a case then pending before Justice James Corkland of that court. Respondent expected Mr. Brown to transmit his request for special consideration to Judge Corkland and Mr. Brown did so.

3. Charge III: Sometime after October 12, 1976, respondent telephoned Ralph E. Brown, Clerk of the Town Court of Lake George, seeking special consideration for the defendant in People v. Paul Schaefer, a case then pending before Justice James Corkland of that court. Respondent advised Mr. Brown that the

defendant had been instrumental in restoration work done to the town court building. Respondent expected Mr. Brown to transmit his request for special consideration to the presiding judge, and Mr. Brown did so.

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 III 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 makes such a request is guilty of favoritism, as is the judge who accedes to it. By making ex parte requests of another judge and a court clerk for favorable dispositions for the defendants in three traffic cases, one of which involved his son as the defendant, 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 and other states, as well as the Commission, have found that favoritism is serious judicial misconduct and that ticket-fixing is a form of favoritism.

In Matter of Byrne, 47 NY2d(b) (Ct. on the Judiciary 1979), 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 (c).


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.

Dated: December 2, 1980
Albany, New York


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