

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

WILLIAM FARR,

Determination

a Justice of the Avon Town and
Village Court, Livingston County.

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

The respondent, William Farr, a justice of the Town and Village Courts of Avon, Livingston County, was served with a Formal Written Complaint dated July 27, 1978, setting forth 12 charges of misconduct relating to the improper assertion of influence in traffic cases. Respondent filed an answer dated September 7, 1978.

The administrator of the Commission, respondent and respondent's counsel entered into an agreed statement of facts on June 4, 1979, pursuant to section 44, subdivision 5, of the 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 of facts, as submitted, on June 21, 1979, and scheduled oral argument with respect to determining (i) whether the facts establish misconduct and (ii) an appropriate sanction, if any. The administrator submitted a memorandum in lieu of oral argument. Respondent waived both oral argument and a memorandum.

The Commission considered the record in this proceeding on July 19, 1979, and upon that record finds the following facts.

1. On July 24, 1975, respondent sent a letter to Justice Gordon Larson of the Town Court of Livonia, seeking special consideration on behalf of the defendant in People v. Thomas Costella, a case then pending before Judge Larson.

2. On January 24, 1976, respondent sent a letter to Justice Thomas Haberneck of the Town Court of Newstead, seeking special consideration on behalf of the defendant in People v. William Scoville, a case then pending before Judge Haberneck.

3. On September 24, 1976, and October 20, 1976, respondent sent letters to Judge Lawrence Schultz of the Batavia City Court, seeking special consideration on behalf of the defendant in People v. Samuel Carrick, a case then pending before Judge Schultz.

4. On June 20, 1973, respondent reduced a charge of speeding to driving with an inadequate muffler in People v.

Bernard Yokes, as a result of a written communication he received from Justice John L. Johnson of the Town Court of Henrietta, seeking special consideration on behalf of the defendant.

5. On May 7, 1975, respondent reduced a charge of speeding to driving with unsafe tires in People v. Peter Samiec, as a result of a communication he received from Justice Roger Barnoski of the Town Court of Hope, seeking special consideration on behalf of the defendant.

6. On July 31, 1975, respondent reduced a charge of speeding to passing in a no passing zone in People v. Anna Ferrari, as a result of a communication that he received from Justice Michael Cerretto of the Town Court of Gates, seeking special consideration on behalf of the defendant.

7. On September 29, 1975, respondent reduced a charge of speeding to driving with unsafe tires in People v. Thomas Plant, as a result of a communication he received from Judge Steele, seeking special consideration on behalf of the defendant.

8. On October 23, 1975, respondent reduced a charge of failing to stop for a stop sign to driving with an inadequate muffler in People v. Virginia Bracchi, as a result of a written communication he received from Justice Carmen Battaglia of the Village Court of Geneseo, seeking special consideration on behalf of the defendant.

9. On February 18, 1976, respondent reduced a charge of speeding to driving with unsafe tires in People v.

Nicholas Desiderio, as a result of a written communication he received from Justice Carmen Battaglia of the Village Court of Geneseo, seeking special consideration on behalf of the defendant.

10. On September 7, 1973, respondent accepted the forfeiture of bail in lieu of further prosecution of charges of invalid inspection and driving with unsafe tires in People v. Frank Zdunzyk, as a result of a written communication he received from Justice Sebastian Lombardi of the Town Court of Lewiston, seeking special consideration on behalf of the defendant.

11. On May 28, 1973, respondent accepted the forfeiture of bail in lieu of further prosecution of a charge of speeding in People v. Louis Hoffman, as a result of a written communication he received from Justice Walter Sipple of the Town Court of Fremont, seeking special consideration on behalf of the defendant.

12. On February 19, 1974, respondent accepted the forfeiture of bail in lieu of further prosecution of a charge of speeding in People v. Aldo Mannoni, as a result of a written communication he received from James Burke, Town and Village Court Case Screener of the Monroe County District Attorney's Office, 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 and Canons 1, 2 and 3A of the Code of Judicial Conduct. Charges I through XII 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 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 the defendants in traffic cases, and by granting such requests from judges and others with influence, 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. Apr. 20, 1978, p. 5 (Ct. on the Judiciary, Apr. 18, 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.

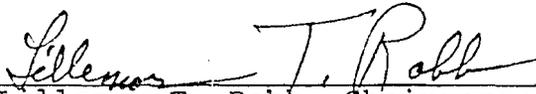
By reason of the foregoing, the Commission determines that the appropriate sanction is censure.

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,
sbudivision 7, of the Judiciary Law.


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

Dated: September 6, 1979
Albany, New York

APPEARANCES:

Jones and Jones (By J. Michael Jones) for Respondent

Gerald Stern for the Commission (Judith Siegel-Baum, Of Counsel)