

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

EDWARD J. FLYNN,

Determination

a Justice of the Clarkstown Town
Court, Rockland County.

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 justice of the Town Court of Clarkstown, Rockland County, was served with a Formal Written Complaint dated January 5, 1979, setting forth (i) eight charges of misconduct relating to his failure to disqualify himself in cases in which his impartiality reasonably might be questioned and (ii) five charges relating to the improper assertion of influence in traffic cases. Respondent filed an answer dated February 7, 1979.

The administrator of the Commission, respondent and respondent's counsel entered into an agreed statement of facts on October 19, 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 made its determination on the pleadings and the facts as agreed upon. The Commission approved the agreed statement of facts, as submitted, on November 14, 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, and invited memoranda thereupon. The administrator submitted a memorandum.

The Commission heard oral argument on January 23, 1980, thereafter, in executive session, considered the record in this proceeding, and upon that record makes the determination herein.

Preliminarily, the Commission finds that respondent is a part-time justice who is permitted to engage in the practice of law.

As to Charges I through IX and Charge XIII(a), the Commission makes the following findings of fact.

1. Charge I: On March 24, 1976, respondent reduced a charge of speeding to driving with an unsafe tire in People v. John B. Juliano as the result of an oral request and a written communication received by a clerk of the Town Court of Clarkstown from Justice Edmund V. Caplicki, Jr., of the Town Court of LaGrange. In a note addressed to respondent, the Clarkstown Town Court clerk referred to Judge Caplicki's request for "consideration."

2. Charge II: On May 15, 1975, respondent imposed an unconditional discharge in People v. Jerome Thiese as the result of a written communication he received from a clerk of the Town Court of Clarkstown, seeking special consideration on behalf of the defendant.

3. Charge III: On March 12, 1975, respondent imposed an unconditional discharge in People v. Carl J. Holback, Jr., as the result of a written communication he received from a clerk of the Town Court of Clarkstown, seeking special consideration on behalf of the defendant.

4. Charge IV: On May 15, 1975, respondent imposed an unconditional discharge in People v. Joann Cortese as the result of a written communication he received from a clerk of the Town Court of Clarkstown, seeking special consideration on behalf of the defendant.

5. Charge V: On May 9, 1975, respondent imposed an unconditional discharge in People v. Lorraine Schlemmer as the result of a written communication he received from a clerk of the Town Court of Clarkstown, seeking special consideration on behalf of the defendant.

6. Charge VI: On November 14, 1974, respondent failed to disqualify himself and adjourned in contemplation of dismissal a charge of speeding in People v. Daniel C. Harm, notwithstanding (i) that the defendant's mother was then employed by the law firm of Mendelson & Flynn, of which respondent was then a partner, (ii) that the defendant's parents had been clients of the firm and (iii) that the defendant's mother had referred several clients to the firm.

7. Charge VII: On November 21, 1974, respondent failed to disqualify himself and adjourned in contemplation of dismissal a charge of speeding in People v. Michael Harm, notwithstanding

(i) that the defendant's mother was then employed by the law firm of Mendelson & Flynn, of which respondent was then a partner, (ii) that the defendant's parents had been clients of the firm and (iii) that the defendant's mother had referred several clients to the firm.

8. Charge VIII: On July 24, 1975, respondent failed to disqualify himself and imposed an unconditional discharge on a charge of speeding in People v. Michaele V. Vandernoeth, notwithstanding that, at the time of respondent's disposition, the law firm of Mendelson & Flynn, of which respondent was then a partner, was representing the defendant in another matter.

9. Charge IX: On March 26, 1974, respondent failed to disqualify himself and imposed an unconditional discharge on a charge of passing in a no-passing zone, notwithstanding that, at the time of respondent's disposition, the law firm of Mendelson & Flynn, of which respondent was then a partner, was representing the defendant in another matter.

10. Charge XIII(a): On November 24, 1976, respondent failed to disqualify himself and adjourned in contemplation of dismissal a charge of leaving the scene of an incident without reporting it in People v. Harold Mitchell, notwithstanding that the defendant and the defendant's wife had been clients of the law firm of Mendelson & Flynn at a time when respondent was a partner in that firm.

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), 33.3(a)(4) and 33.3(c)(1) of the Rules Governing Judicial Conduct and Canons 1, 2, 3A(1), 3A(4) and 3C(1) of the Code of Judicial Conduct. Charges I through IX and Charge XIII(a) of the Formal Written Complaint are sustained and respondent's misconduct is established.

Charges X through XII and Charge XIII(b) of the Formal Written Complaint are not sustained and therefore are dismissed.

Respondent's misconduct in the matters herein falls into two categories: (i) acceding to special influence on behalf of defendants in traffic cases and (ii) failing to disqualify himself in cases in which his impartiality reasonably might be questioned.

As to the accession to special influence in traffic cases, 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 individual who made the request. By granting ex parte requests for favorable dispositions for defendants in traffic cases, from a judge and others in a special position to influence him, respondent violated the applicable sections of the Rules enumerated above.

Courts in this state and other jurisdictions, and this Commission, have found that favoritism is serious judicial misconduct and that ticket-fixing is a form of favoritism.

As to those matters pertaining to respondent's failure to disqualify himself, it is improper for a judge to preside over matters in which his impartiality reasonably might be questioned because of his relationship to one or more of the parties.

Public confidence in the integrity and impartiality of the judiciary is not maintained where a judge who presides over matters in which his clients, former clients and relatives of his law firm's employee appear as parties. By presiding over such cases, respondent evinced a disregard of the specific Rules which required his disqualification, as well as those which require all judges to conduct themselves in such a manner as to promote public confidence in the judiciary and to avoid even the appearance of impropriety. As noted by the Appellate Division in Matter of Filipowicz:

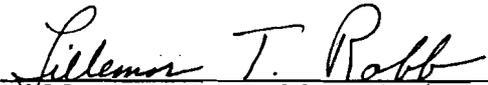
While we realize that in small communities, part-time Judges or Justices, many of whom are principally engaged in the practice of law, know many, if not most, of the people in their community, and may, in exigent circumstances, be required to preside over arraignments and bail applications, we cannot countenance the apparently prevailing practice in which such judicial officers sit in judgment in cases in which they formerly had an attorney-client relationship with the litigant. Matter of Filipowicz, 54 AD2d 348, 350 (2d Dept. 1976).

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

All concur, except for Mr. Bromberg, who votes that the appropriate sanction is censure.

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.


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

Dated: March 26, 1980
Albany, New York

APPEARANCES:

Gerald Stern (Emily S. Needle, Of Counsel) for the Commission

McCormack & Damiani (By Gilbert E. McCormack) for Respondent