

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

RICHARD FOLMSBEE,

a Justice of the Princeton Town
Court, Schenectady County.

Determination

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
Carroll L. Wainwright, Jr.

The respondent, Richard Folmsbee, a justice of the Princeton Town Court, Schenectady County, was served with a Formal Written Complaint dated July 27, 1978, setting forth eight 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 May 7, 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 May 21, 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. 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 June 21, 1979, and upon that record makes the findings of fact and conclusions of law set forth below.

Charges I, III, VII and VIII of the Formal Written Complaint are not sustained and therefore are dismissed.

With respect to Charges II, IV, V and VI of the Formal Written Complaint, the Commission finds as follows:

1. On March 18, 1974, respondent sent a letter to a justice of the Town Court of Colonie, seeking special consideration on behalf of the defendant in People v. Thomas Long, a case then pending in that court.

2. On December 4, 1972, respondent sent a letter to a justice of the Town Court of Rotterdam, seeking special consideration on behalf of the defendant in People v. Walter Rapoport, a case then pending in that court.

3. On April 14, 1976, respondent sent a letter to Justice Charles D. Persons of the Town Court of Florida, seek-

ing special consideration on behalf of the defendant in People v. Wayne Sparre, a case then pending before Judge Persons.

4. On July 24, 1973, respondent reduced a charge of speeding to driving with unsafe tires in People v. Richard M. Teller as a result of a communication he received from Justice Thomas Nethaway of the Town Court of Glen, 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 II, IV, V and VI 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 a request from another judge, 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.

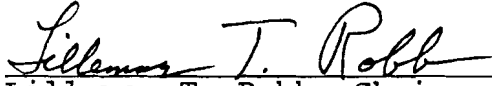
In Matter of Byrne, N.Y.L.J. Apr. 20, 1978, p. 5 (Ct. on the Judiciary, Apr. 18, 1978), the court declared that a "judicial officer who accords or requests special treatment or favoritism to a defendant in his court or another judge's court is guilty of malum in se misconduct constituting cause for discipline." 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 unanimously 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.


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

Dated: September 6, 1979
Albany, New York

APPEARANCES:

Grasso and Grasso (By Frank N. Grasso) for Respondent

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