

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

ROBERT C. FORSYTHE,

a Justice of the Vernon Town Court,
Oneida 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, Robert C. Forsythe, a justice of the Town Court of Vernon, Oneida County, was served with a Formal Written Complaint dated November 13, 1978, setting forth 11 charges of misconduct relating to the improper assertion of influence in traffic cases. Respondent filed an amended answer dated February 15, 1979.

The administrator of the Commission moved for summary determination on May 14, 1979, pursuant to Section 7000.6(c) of the Commission's rules (22 NYCRR 7000.6[c]). Respondent submitted papers dated April 10, 1979, in response to the administrator's motion. The Commission granted the motion on May 21, 1979, found

respondent guilty of misconduct with respect to all 11 charges in the Formal Written Complaint, and set a date for oral argument on the issue of an appropriate sanction. The administrator submitted a memorandum in lieu of oral argument. Respondent waived oral argument and did not submit a memorandum on sanction.

The Commission considered the record in this proceeding on June 21, 1979, and upon that record finds the following facts:

1. On June 23, 1973, respondent sent a letter to the presiding magistrate of the Town Court of Kirkland, seeking special consideration on behalf of the defendant in People v. Norman R. Snider, a case then pending in that court.

2. On March 26, 1976, respondent sent a letter to a justice of the Town Court of Newstead, seeking special consideration on behalf of the defendant in People v. Franklin G. Zophy, a case then pending in that court.

3. On July 14, 1973, respondent reduced a charge of speeding to driving with an inadequate muffler in People v. John A. Seamon as a result of a communication he received from Trooper Burgdoff, or someone at the trooper's request, seeking special consideration on behalf of the defendant.

4. On October 26, 1973, respondent reduced a charge of speeding to driving with an unsafe tire in People v. Mary L. Seeley as a result of a communication he received from his co-justice, John W. Orr, of the Town Court of Vernon, or someone

at Judge Orr's request, seeking special consideration on behalf of the defendant.

5. On January 18, 1974, respondent reduced a charge of speeding to driving with an unsafe tire in People v. Philip Wenzel as a result of a communication he received from Trooper Burgdoff, seeking special consideration on behalf of the defendant.

6. On February 28, 1975, respondent reduced a charge of speeding to driving with an unsafe tire in People v. James E. Mason as a result of a communication he received from a judge of the Town Court of Lincoln, seeking special consideration on behalf of the defendant.

7. On February 26, 1977, respondent reduced a charge of passing a red light to driving with an unsafe tire in People v. Basil H. Smith as a result of a communication he received from someone at the Oneida Police Department, seeking special consideration on behalf of the defendant.

8. On May 7, 1976, respondent reduced a charge of failing to stop at a stop sign to driving with an unsafe tire in People v. James A. Walker as a result of a written communication he received from Trooper L.J. Brown, seeking special consideration on behalf of the defendant.

9. On June 18, 1976, respondent reduced a charge of speeding to driving with an unsafe tire in People v. Eric J. Burgdoff as a result of a communication he received from Trooper

Burgdoff, seeking special consideration on behalf of the defendant, who is Trooper Burgdoff's son.

10. On June 18, 1976, respondent reduced a charge of speeding to driving with an unsafe tire in People v. David F. Dunn as a result of a communication he received from Justice J.P. Comstock of the Town Court of Westmoreland, or someone at Judge Comstock's request, seeking special consideration on behalf of the defendant.

11. On November 12, 1976, respondent reduced a charge of speeding to driving with an unsafe tire in People v. Peter E. Kinslow as a result of a communication he received from Justice Melvin Sitterly of the Town Court of German Flatts, or someone at Judge Sitterly's request, 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 XI 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

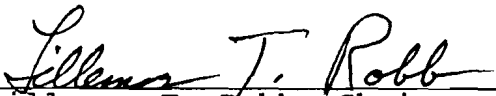
is guilty of malum in se misconduct constituting cause for discipline." In that case, ticket-fixing was equated with favoritism, which the court stated was "wrong and has always been wrong." Id.

By reason of the foregoing, the Commission 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:

Richard Wiles for Respondent

Gerald Stern for the Commission (Barry M. Vucker, Judith Siegel-Baum,
Of Counsel)