

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

HENRY R. GABRYSZAK,

Determination

a Justice of the Sloan Village Court and
Cheektowaga Town Court, Erie 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
Honorable Isaac Rubin
Honorable Felice K. Shea
Carroll L. Wainwright, Jr.

Respondent, Henry R. Gabryszak, a justice of the Village Court of Sloan and the Town Court of Cheektowaga, Erie County, was served with a Formal Written Complaint dated July 27, 1978, setting forth 17 charges relating to the improper assertion of influence in traffic cases. Respondent filed an answer dated August 22, 1978.

By order dated November 16, 1978, the Commission appointed Carman F. Ball, Esq., as referee to hear and report to the Commission with respect to the facts herein. A hearing was held on June 6, 7, 8, 25, and July 11, 1979, and the report of the referee, dated September 28, 1979, was filed with the Commission.

By notice dated January 14, 1980, the administrator of the Commission moved to confirm the referee's report and for a determination that respondent be censured. By notice dated January 28, 1980, respondent cross-moved to disaffirm the referee's report and for a dismissal of the Formal Written Complaint. The administrator filed an affirmation dated February 14, 1980, in opposition to the respondent's cross-motion. Respondent waived oral argument with respect to the motion.

The Commission considered the record in this proceeding on February 26, 1980, and upon that record makes the following findings of fact and conclusions of law.

Charge XI is not sustained, and therefore is dismissed.

1. Charge I: On February 19, 1976, respondent sent a letter on his judicial stationery to Justice Samuel Trippi of the Village Court of Mount Morris, seeking special consideration on behalf of the defendant in People v. Joseph Radwan, a case then pending before Judge Trippi.

2. Charge II: On April 5, 1976, respondent communicated with Justice Norman E. Kuehnel of the Town Court of Hamburg, seeking special consideration on behalf of the defendant in People v. Daniel Rustowicz, a case then pending before Judge Kuehnel.

3. Charge III: On February 5, 1975, respondent dismissed a charge of speeding in People v. William N. Denman as a result of a communication he received from Trooper Dykas seeking special consideration on behalf of the defendant, a justice of the Town Court of Niles.

4. Charge IV: On June 20, 1975, respondent reduced a charge of speeding to illegal parking in People v. Michael Cavalcanti as a result of a written communication he received from Justice Wesley T. Wooden of the Town Court of Greece, seeking special consideration on behalf of the defendant.

5. Charge V: On November 12, 1974, respondent reduced a charge of speeding to driving with unsafe tires in People v. Marcus W. Crahan as a result of a communication he, or someone under his direction, initiated with the arresting officer, seeking special consideration on behalf of the defendant.

6. Charge VI: On February 6, 1976, respondent reduced a charge of speeding to driving with an inadequate muffler in People v. Linda Fiorella as a result of a communication he received from Justice J. M. Kelleher of the Town Court of Lancaster, seeking special consideration on behalf of the defendant.

7. Charge VII: On August 4, 1976, respondent reduced a charge of failure to yield to illegal parking in People v. Armand U. Garafalo as a result of a written communication he received from Justice Richard Lips of the Town Court of Clifton Park, seeking special consideration on behalf of the defendant.

8. Charge VIII: On April 18, 1977, respondent reduced a charge of speeding to illegal parking in People v. Gerald P. Szostak as a result of a communication he received from the arresting officer seeking special consideration on behalf of the defendant.

9. Charge IX: On June 8, 1976, respondent reduced a

charge of passing a red light to illegal parking in People v. Mary L. Jegierski as a result of a communication he received seeking special consideration on behalf of the defendant.

10. Charge X: On February 23, 1976, respondent reduced a charge of speeding to illegal parking in People v. Adam Kaczanowski as a result of a communication he received seeking special consideration on behalf of the defendant.

11. Charge XII: On March 22, 1975, respondent reduced a charge of speeding to illegal parking in People v. David R. Mazurowski as a result of a written communication he received from Patrolman D. J. Tolsma seeking special consideration on behalf of the defendant.

12. Charge XIII: On September 17, 1975, respondent reduced a charge of backing on expressway to illegal parking in People v. Oscar A. Patrignani as a result of a written communication he received from Police Captain John T. Maccarone seeking special consideration on behalf of the defendant.

13. Charge XIV: On July 13, 1976, respondent reduced a charge of speeding to illegal parking in People v. Russel H. Schepp as a result of a written communication he received from Judge R. D. Wilson of the Minoa Police Court, seeking special consideration on behalf of the defendant.

14. Charge XV: On March 17, 1976, respondent reduced a charge of driving with an overloaded axle to improper use of a restricted highway by an overweight vehicle in People v. Robert C. Schultz as a result of a written communication he received from Justice Herbert Titus of the Town Court of Ira, seeking special

consideration on behalf of the defendant.

15. Charge XVI: On June 11, 1976, respondent reduced a charge of speeding to driving to the left of pavement markings in People v. Paul F. Smith as a result of a written communication he received from Justice Andrew Lang of the Town Court of Pembroke, seeking special consideration on behalf of the defendant.

16. Charge XVII: On November 6, 1974, respondent reduced a charge of speeding to driving with an inadequate muffler in People v. John J. Syracuse, Jr., as a result of a written communication he received from James R. Burke, Town and Village Court Case Screener for 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 X and XII through XVII 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 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 and persons of influence, for favorable dispositions for defendants in traffic

cases, and by granting such requests, 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)]

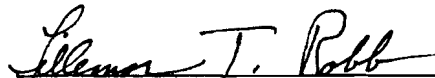
Courts in this and other states, as well as the Commission, have found that favoritism is serious judicial misconduct and that ticket-fixing is a form of favoritism.

In Matter of Byrne, 420 NYS2d 70 (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 71-72.

By reason of the foregoing, the Commission determines by vote of 7 to 3 that the appropriate sanction is censure. Judge Cardamone, Mr. Wainwright and Judge Rubin dissent only with respect to sanction and vote that the appropriate sanction is admonition.

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: May 9, 1980
Albany, New York

APPEARANCES:

Gerald Stern (Lester C. Goodchild and John W. Dorn, Of Counsel)
for the Commission

John P. Bartolomei for Respondent