

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

JOHN G. GAMBLE,

a Justice of the Lewiston Town Court,
Niagara 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.

Respondent, John G. Gamble, a justice of the Town Court of Lewiston, Niagara County, was served with a Formal Written Complaint dated July 27, 1978, setting forth seven charges relating to the improper assertion of influence in traffic cases. Respondent filed an answer dated October 5, 1978.

The administrator of the Commission, respondent and respondent's counsel entered into an agreed statement of facts on September 28, 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 October 25, 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 did not appear and did not submit a memorandum. The Commission considered the record in this proceeding on December 13, 1979, and upon that record makes the following findings of fact.

1. As to Charge I, on May 4, 1976, respondent sent a letter on his judicial stationery to the Justice of the Town Court of Wheatfield, seeking special consideration on behalf of the defendant in People v. Duane Olds, a case then pending in that court.

2. As to Charge II, on November 4, 1972, respondent imposed an unconditional discharge in People v. Patsy Di Bartolomeo as a result of a communication he received from Judge Sebastian Lombardi, his co-justice, seeking special consideration on behalf of the defendant.

3. As to Charge III, on March 21, 1974, respondent reduced a charge of speeding to driving with unsafe tires in People v. Charles Modden as a result of a written communication he received from Justice Theodore J. Cantanucci of the Village Court of Richmondville, seeking special consideration on behalf of the defendant.

4. As to Charge V, on March 26, 1973, respondent sent a letter on his "Judges and Police Executives Conference of Niagara County" stationery to Justice Thomas O'Connell of the Town Court of Brutus, seeking special consideration on behalf of the defendant, his cousin, in People v. Eugene Harvey, a case then pending before Judge O'Connell.

5. As to Charge VI, on November 19, 1972, respondent accepted the forfeiture of bail in lieu of further prosecution of a charge of driving to the left of pavement markings in People v. Joseph Cirillo, as a result of a written communication he received from Judge Sebastian Lombardi, his co-justice, seeking special consideration on behalf of the defendant.

6. As to Charge VII, on January 2, 1973, respondent accepted the forfeiture of bail in lieu of further prosecution of a charge of speeding in People v. Rose Venturella as a result of a written communication he received from Judge Sebastian Lombardi, his co-justice, 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, Canons 1, 2 and 3A of the Code of Judicial Conduct and Canons 4, 5, 13, 14, 17 and 34 of the Canons of Judicial Ethics. Charges I through III and V through VII of the Formal Written Complaint are sustained, and respondent's misconduct is established.

Charge IV is not sustained and therefore is dismissed.

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, 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.

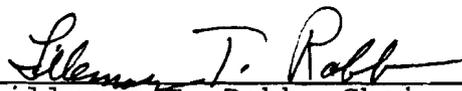
In Matter of Byrne, 420 NYS2d 70 (Ct. on the Judiciary 1978), the court declared that a "judicial officer who accords or requests special treatment or favoritism to a defendant in his court or another judge's court is guilty of malum in se misconduct constituting cause for discipline." In that case, ticket-fixing was equated with favoritism, which the court stated was "wrong and has always been wrong." Id. at 71-72.

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, subdivision 7, of the Judiciary Law.


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

Dated: March 11, 1980
Albany, New York

APPEARANCES:

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

Fuller & Jackson (By Harry O. Fuller) for Respondent