

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

GORDON GUSHEE,

a Justice of the Porter Town Court,
Niagara County.

Determination

BEFORE: Honorable Fritz W. Alexander, II
David Bromberg
Honorable Richard J. Cardamone
Dolores DelBello
Victor A. Kovner
William V. Maggipinto
Honorable Isaac Rubin
Carroll L. Wainwright, Jr.

Respondent, Gordon Gushee, a justice of the Town Court of Porter, Niagara County, was served with a Formal Written Complaint dated July 27, 1978, setting forth 20 charges relating to the improper assertion of influence in traffic cases. Respondent filed an answer dated August 8, 1978.

By order dated November 16, 1978, the Commission appointed Carmen F. Ball, Esq., as referee to hear and report to the Commission with respect to the facts herein. A hearing was held on April 23 through 26 and May 7 through 9, 1979, and the report of the referee, dated August 16, 1979, was filed with the Commission.

By notice dated February 13, 1980, the administrator moved to confirm the referee's report and for a determination that respondent be censured. By notice dated March 12, 1980, respondent cross-moved to disaffirm the referee's report and for a determination dismissing the Formal Written Complaint. The administrator filed an affirmation in opposition to respondent's cross-motion. Respondent waived oral argument.

The Commission considered the record in this proceeding on March 21, 1980, and upon that record makes the following findings of fact and conclusions of law.

1. Charge I: On or about September 11, 1976, respondent sent a letter to Justice Carl Timko of the Town Court of Niagara, seeking special consideration on behalf of the defendant in People v. Donald Stock, a case then pending before Judge Timko.

2. Charge II: On or about March 2, 1977, respondent communicated with Justice Donald Bemis of the Town Court of Porter, seeking special consideration on behalf of the defendant in People v. Charles Ruble, a case then pending before Judge Bemis.

3. Charge III: On or about March 2, 1977, respondent communicated with Justice Donald Bemis of the Town Court of Porter, seeking special consideration on behalf of the defendant in People v. Evelyn Ruble, a case then pending before Judge Bemis.

4. Charge IV: On or about October 16, 1973, respondent reduced a charge of passing a stop sign to driving with an inadequate muffler in People v. John Baldassara as a result of

a written communication he received from Justice Sebastian Lombardi of the Town Court of Lewiston, seeking special consideration on behalf of the defendant.

5. Charge V: On or about August 11, 1976, respondent reduced a charge of speeding to driving with an inadequate muffler in People v. Hellen S. Helmich as a result of a written communication he received from Justice Sebastian Lombardi of the Town Court of Lewiston, seeking special consideration on behalf of the defendant.

6. Charge VI: On or about May 14, 1973, respondent imposed an unconditional discharge in People v. Edward Fraser as a result of a written communication he received from Justice Sebastian Lombardi of the Town Court of Lewiston, seeking special consideration on behalf of the defendant.

7. Charge VII: On or about August 12, 1974, respondent reduced a charge of speeding to driving with an inadequate muffler in People v. Richard Johnson as a result of a written communication he received from Justice Sebastian Lombardi of the Town Court of Lewiston, seeking special consideration on behalf of the defendant.

8. Charge VIII: On or about January 23, 1973, respondent reduced a charge of speeding to driving with unsafe tires in People v. Charles Schumacher as a result of a written communication he received from Trooper Fechner seeking special consideration on behalf of the defendant.

9. Charge IX: On or about March 20, 1973, respondent imposed a conditional discharge in People v. Sharon L. Sesto

as a result of a communication he received from Gloria A. Donovan, Clerk of the Town Court of Lewiston, seeking special consideration on behalf of the defendant.

10. Charge X: On or about July 30, 1975, respondent reduced a charge of speeding to driving with an inadequate muffler in People v. Michael Veillette as a result of a written communication he received from Justice Sebastian Lombardi of the Town Court of Lewiston, seeking special consideration on behalf of the defendant.

11. Charge XI: On or about September 18, 1973, respondent accepted the forfeiture of bail in lieu of further prosecution of a charge of speeding in People v. Arthur E. Girasole as a result of a written communication he received from Justice Sebastian Lombardi of the Town Court of Lewiston, seeking special consideration on behalf of the defendant.

12. Charge XII: On or about May 7, 1974, respondent accepted the forfeiture of bail in lieu of further prosecution of a charge of speeding in People v. James Tingué as a result of a written communication he received from Justice Sebastian Lombardi, seeking special consideration on behalf of the defendant.

13. Charge XIII: On or about November 30, 1971, respondent accepted the forfeiture of bail in lieu of further prosecution of charges of speeding and passing a stop sign in People v. Raymond C. Cournyea as a result of a written communication he received from Justice Sebastian Lombardi of the Town Court of Lewiston, seeking special consideration on behalf of the defendant.

14. Charge XIV: On or about March 23, 1974, respondent accepted the forfeiture of bail in lieu of further prosecution of a charge of speeding in People v. Mary J. Steiner as a result of a written communication he received from Justice Sebastian Lombardi of the Town Court of Lewiston, seeking special consideration on behalf of the defendant.

15. Charge XV: On or about November 11, 1976, respondent accepted the forfeiture of bail in lieu of further prosecution of a charge of speeding in People v. Nancy E. Gombert as a result of a written communication he received from Justice Sebastian Lombardi of the Town Court of Lewiston, seeking special consideration on behalf of the defendant.

16. Charge XVI: On or about October 20, 1976, respondent accepted the forfeiture of bail in lieu of further prosecution of a charge of speeding in People v. Cecile Brownell as a result of a written communication he received from Justice Sebastian Lombardi of the Town Court of Lewiston, seeking special consideration on behalf of the defendant.

17. Charge XVII: On or about April 23, 1974, respondent accepted the forfeiture of bail in lieu of further prosecution of a charge of speeding in People v. Rebecca I. Geltz as a result of a written communication he received from Justice Sebastian Lombardi of the Town Court of Lewiston, seeking special consideration on behalf of the defendant.

18. Charge XVIII: On or about November 18, 1975, respondent accepted the forfeiture of bail in lieu of further

prosecution of a charge of driving to the left of the pavement markings in People v. Betty J. Schmoyer as a result of a written communication he received from Justice Sebastian Lombardi of the Town Court of Lewiston, seeking special consideration on behalf of the defendant..

19. Charge XIX: On or about April 23, 1974, respondent accepted the forfeiture of bail in lieu of further prosecution of a charge of speeding in People v. Steven Weintraub as a result of a written communication he received from Justice Sebastian Lombardi of the Town Court of Lewiston, seeking special consideration on behalf of the defendant.

20. Charge XX: On or about November 17, 1976, respondent accepted the forfeiture of bail in lieu of further prosecution of a charge of speeding in People v. Anna E. Kendall as a result of a written communication he received from Justice Sebastian Lombardi of the Town Court of Lewiston, 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 XX 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 for favorable dispositions for defendants in traffic cases, and by granting such requests from judges and other persons of 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 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 1978), the court declared that a "judicial officer who accords or

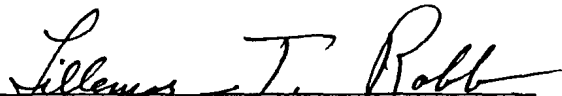
requests special treatment or favoritism to a defendant in his court or another judge's court is guilty of malum in se misconduct constituting cause for discipline." In that case, ticket-fixing was equated with favoritism, which the court stated was "wrong and has always been wrong." Id. at 71-72.

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: 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