

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

HAROLD A. HENNESSY,

a Justice of the Lima Town and
Village Courts, Livingston 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, Harold A. Hennessy, a justice of the
Town and Village Courts of Lima, Livingston County, was served
with a Formal Written Complaint dated February 5, 1979, setting
forth nine charges of misconduct relating to the improper
assertion of influence in traffic cases. Respondent filed an
answer dated March 8, 1979.

The administrator of the Commission moved for summary
determination on May 7, 1979, pursuant to Section 7000.6(c) of
the Commission's rules (22 NYCRR 7000.6[c]). Respondent opposed
the motion, and, in a letter submitted to the Commission, waived
the hearing provided for by Section 44, subdivision 4, of the

Judiciary Law. The Commission granted the motion on May 21, 1979, dismissed Charge I of the Formal Written Complaint, found respondent guilty of misconduct with respect to the remaining eight charges, 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 submitted a letter to the Commission. A letter from the Assistant District Attorney of Livingston County was also submitted on respondent's behalf.

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.

Charge I of the Formal Written Complaint is not sustained and therefore is dismissed.

With respect to Charges II through IX of the Formal Written Complaint, the Commission finds as follows:

1. On February 6, 1973, respondent reduced a charge of speeding to driving with an unsafe tire in People v. Robert W. Childs as a result of a communication he received from Justice Sullivan of the Town Court of Henrietta, or someone at Justice Sullivan's request, seeking special consideration on behalf of the defendant.

2. On June 26, 1973, respondent reduced a charge of speeding to driving with an unsafe tire in People v. Kenneth E. Cassidy as a result of a communication he received from Livingston County Deputy Sheriff William Bastian, or someone at

Deputy Bastian's request, seeking special consideration on behalf of the defendant.

3. On December 1, 1973, respondent reduced a charge of speeding to driving with an unsafe tire in People v. Richard P. Davis as a result of a communication he received from Justice Donald L. Boughner of the Town Court of Riga, or someone at Judge Boughner's request, seeking special consideration on behalf of the defendant.

4. On February 22, 1974, respondent reduced a charge of speeding to driving with an unsafe tire in People v. Donald G. Gerould as a result of a communication he received from Trooper Recktenwald, or someone at Trooper Recktenwald's request, seeking special consideration on behalf of the defendant.

5. On March 14, 1974, respondent reduced a charge of speeding to driving with an unsafe tire in People v. Beryl N. Conklin as a result of a communication he received from Judge Barr, seeking special consideration on behalf of the defendant.

6. On June 4, 1974, respondent reduced a charge of speeding to driving with an unsafe tire in People v. Edward W. O'Hara as a result of a communication he received from former District Attorney Secora, or someone at Mr. Secora's request, seeking special consideration on behalf of the defendant.

7. On December 21, 1976, respondent reduced a charge of speeding to driving with an unsafe tire in People v. Randy O. Wightman as a result of a communication he received from

Livingston County Deputy Sheriff D. Haskins, seeking special consideration on behalf of the defendant.

8. On March 22, 1977, respondent reduced a charge of speeding to driving with an unsafe tire in People v. Earl A. Tieppo as a result of a written communication he received from State Trooper J.J. Orszulak, 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, 17 and 34 of the Canons of Judicial Ethics. Charges II through IX 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 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.

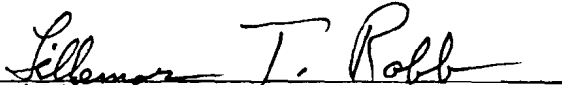
In Matter of Byrne, N.Y.L.J. Apr. 20, 1978, p. 5 (Ct. on the Judiciary, Apr. 18, 1978), the court declared that a "judicial officer who accords or requests special treatment or favoritism to a defendant in his court or another judge's court is guilty of malum in se misconduct constituting cause for discipline."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

Judge Cardamone, Judge Rubin and Mr. Wainwright dissent only with respect to the 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: September 6, 1979
Albany, New York

APPEARANCES:

Harold A. Hennessy, Respondent *Pro Se*

Gerald Stern for the Commission (Judith Siegel-Baum, Of Counsel)