

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

R. DOUGLAS HIRST,

a Justice of the Fishkill Village
Court, Dutchess County.

Determination

BEFORE: Mrs. Gene Robb, Chairwoman
Honorable Fritz W. Alexander, II
David Bromberg
Dolores DelBello
Michael M. Kirsch
Victor A. Kovner
William V. Maggipinto
Honorable Isaac Rubin
Honorable Felice K. Shea
Carroll L. Wainwright, Jr.

Respondent, a justice of the Village Court of Fishkill,
Dutchess County, was served with a Formal Written Complaint dated
July 27, 1978, setting forth five charges relating to the improper
assertion of influence in traffic cases. Respondent filed an
answer dated August 25, 1978.

By an amended notice dated December 4, 1978, the
administrator of the Commission moved for summary determination
pursuant to Section 7000.6(c) of the Commission's rules (22 NYCRR
7000.6[c]). Respondent submitted an affirmation in opposition to
the motion for summary determination. The Commission denied the
motion on January 24, 1979.

By order dated March 5, 1979, the Commission appointed the Honorable Caroline K. Simon as referee to hear and report with respect to the facts herein. A hearing was conducted on July 20, 1979, and the report of the referee dated October 2, 1979, was filed with the Commission.

By notice dated December 18, 1979, the administrator of the Commission moved to confirm the referee's report and for a determination that respondent be censured. Respondent filed an affirmation in opposition to the motion dated December 24, 1979, and the administrator filed a reply dated January 3, 1980. Respondent waived oral argument before the Commission on this matter.

The Commission considered the record in this proceeding on January 24, 1980, and upon that record makes the following findings of fact.

1. Charge I: On March 12, 1974, respondent sent a letter to Justice William Bulger of the Town Court of Wappinger, seeking special consideration on behalf of the defendant in People v. Brian Altic, a case then pending before Judge Bulger.

2. Charge II: On June 7, 1973, respondent sent a letter to Justice John T. Baldwin of the Town Court of Pine Plains, seeking special consideration on behalf of the defendant in People v. Curtis Andujar, a case then pending before Judge Baldwin.

3. Charge III: On June 19, 1974, respondent sent a letter to Justice William Bulger of the Town Court of Wappinger, seeking special consideration on behalf of the defendant in

People v. Marylou Caccetta, a case then pending before Judge Bulger.

4. Charge IV: On April 11, 1974, respondent sent a letter to Justice Behrend Goossen of the Town Court of Southeast, seeking special consideration on behalf of the defendant in People v. George Pullis, a case then pending before Judge Goossen.

5. Charge V: On August 18, 1976, respondent reduced a charge of passing a red light to failure to obey a sign in People v. Lillian M. Harris as a result of a communication he received from Justice Francois Cross of the Town Court of Fishkill, 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 V 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 a request from another judge, 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)]

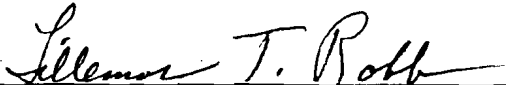
Courts in this state and other jurisdictions have found that favoritism is serious judicial misconduct and that ticket-fixing is a form of favoritism.

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 by vote of 7 to 3 that the appropriate sanction is censure. Mr. Kirsch, Judge Rubin and Mr. Wainwright 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: March 26, 1980
Albany, New York

APPEARANCES:

Gerald Stern (Edith Holleman and Richard Granofsky, Of Counsel)
for the Commission

Bernard Kessler for Respondent