

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

THOMAS W. KEEGAN,

a Judge of the Albany City Police
Court, Albany 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
Honorable Isaac Rubin
Honorable Felice K. Shea
Carroll L. Wainwright, Jr.

Respondent, Thomas W. Keegan, a judge of the Albany City Police Court, Albany County, was served with a Formal Written Complaint dated October 26, 1978, setting forth eleven charges relating to the improper assertion of influence in traffic cases. Respondent filed an answer dated November 17, 1978.

By order dated June 14, 1979, the Commission appointed James A. O'Connor, Esq., as referee to hear and report to the Commission with respect to the facts herein. A hearing was held on August 21, 1979, and the report of the referee, dated December 20, 1979, was filed with the Commission.

By notice dated February 7, 1980, the administrator of the Commission moved to confirm the report of the referee,

and for a determination that respondent be censured. Respondent waived oral argument and did not submit any papers.

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

1. Charge I: Between March 5, 1974, and April 25, 1974, respondent sent three letters on his judicial stationery to Justice George Carl of the Town Court of Catskill, seeking special consideration on behalf of the defendant in People v. Gerald Klein, a case then pending before Judge Carl.

2. Charge II: On October 3, 1974, respondent sent a letter to Judge John Holt-Harris of the Albany City Traffic Court, seeking special consideration on behalf of the defendant in People v. William J. Prescott, a case then pending before Judge Holt-Harris.

3. Charge III: On October 29, 1974, respondent sent a letter on his judicial stationery to Justice Joseph Thomson of the Town Court of Cornwall, seeking special consideration on behalf of the defendant in People v. John J. Thompson, a case then pending before Judge Thomson.

4. Charge IV: On December 16, 1974, respondent sent a letter to Judge John Holt-Harris of the Albany City Traffic Court, seeking special consideration on behalf of the defendant in People v. Harley Strauss, a case then pending before Judge Holt-Harris.

5. Charge V: On June 14, 1975, respondent, or someone at his request, communicated with a justice of the Town Court of Catskill, seeking special consideration on behalf of the defendant in People v. John J. Thompson, a case then pending in the Town Court of Catskill.

6. Charge VI: On December 11, 1975, respondent sent a letter to Judge John Holt-Harris of the Albany City Traffic Court, seeking special consideration on behalf of the defendant in People v. Fred R. Chavin, a case then pending before Judge Holt-Harris.

7. Charge VII: On December 11, 1975, respondent sent a letter to Judge John Holt-Harris of the Albany City Traffic Court, seeking special consideration on behalf of the defendant in People v. Arthur Armstrong, a case then pending before Judge Holt-Harris.

8. Charge VIII: On December 15, 1975, respondent sent a letter to Judge John Holt-Harris of the Albany City Traffic Court, seeking special consideration on behalf of the defendant in People v. William Paraso, Jr., a case then pending before Judge Holt-Harris.

9. Charge IX: On August 13, 1976, respondent sent a letter to Judge John Holt-Harris of the Albany City Traffic Court, seeking special consideration on behalf of the defendant in People v. Thomas Martinez, a case then pending before Judge Holt-Harris.

10. Charge X: On February 3, 1977, respondent sent

a letter to Judge John Holt-Harris of the Albany City Traffic Court, seeking special consideration on behalf of the defendant in People v. Linda Jordan, a case then pending before Judge Holt-Harris.

11. Charge XI: On February 24, 1977, respondent sent a letter to Judge John Holt-Harris of the Albany City Traffic Court, seeking special consideration on behalf of the defendant in People v. Raymond Roger, a case then pending before Judge Holt-Harris.

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 XI 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, 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 relationship 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)]

In one of his letters to another judge, respondent also indicated his willingness to accommodate a request for consideration similar to the one he himself was making. Such an offer of reciprocity only compounds respondent's misconduct.

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.

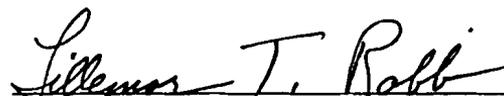
In Matter of Byrne, 420 NYS2d 70 (Ct. on the Judiciary 1979), the court declared that a "judicial officer who accords or requests special treatment or favoritism to a defendant in his court or another judge's court is guilty of malum in se misconduct constituting cause for discipline." In that case, 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 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 20, 1980
Albany, New York

APPEARANCES:

Gerald Stern (Jack J. Pivar, Of Counsel) for the Commission

Robert G. Lyman for Respondent