

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

ANDREW L. LANG,

a Justice of the Pembroke Town Court,
Genesee 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, Andrew L. Lang, a justice of the Town Court of Pembroke, Genesee County, was served with a Formal Written Complaint dated January 29, 1979, setting forth 22 charges of misconduct relating to the improper assertion of influence in traffic cases. Respondent filed an amended answer dated March 15, 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 filed an answering affidavit dated April 30, 1979. The Commission granted the motion on May 21, 1979, found respondent guilty of misconduct

with respect to all 22 charges, and set a date for oral argument on the issue of an appropriate sanction. Both the administrator and respondent submitted memoranda in lieu of oral argument.

The Commission considered the record in this proceeding on June 21, 1979, and upon that record finds the following facts:

1. On November 11, 1975, respondent sent a letter to Justice Eugene Leigh of the Town Court of Gaines, seeking special consideration on behalf of the defendant in People v. Myron Chittenden, a case then pending before Judge Leigh.

2. On June 11, 1976, respondent sent a letter to the presiding magistrate of the Town Court of Cheektowaga, seeking special consideration on behalf of the defendant in People v. Paul F. Smith, a case then pending in that court.

3. On June 19, 1976, respondent sent a letter to a justice of the Town Court of Cheektowaga, seeking special consideration on behalf of the defendant in People v. Norman Newton Jr., a case then pending in that court.

4. On May 22, 1974, respondent reduced a charge of speeding to driving with an inadequate muffler in People v. Peter P. Pilittere as a result of a written communication he received from Justice Michael Cerretto of the Town Court of Gates, seeking special consideration on behalf of the defendant.

5. On April 3, 1975, respondent reduced a charge of speeding to driving with an inadequate muffler in People v. Robert J. Garus as a result of a written communication he

received from Trooper Jim Cackett, seeking special consideration on behalf of the defendant.

6. On October 21, 1975, respondent reduced a charge of speeding to driving with an inadequate muffler in People v. Richard J. Comiskey as a result of a written communication he received from a justice of the Town Court of Alden, seeking special consideration on behalf of the defendant.

7. On November 29, 1975, respondent reduced a charge of speeding to driving with an inadequate exhaust in People v. James M. Ryan as a result of a written communication he received from Justice Rudolph Halicki of the Town Court of Dunkirk, seeking special consideration on behalf of the defendant.

8. On November 29, 1975, respondent reduced a charge of speeding to driving with an unsafe tire in People v. Richard C. Weiler as a result of a written communication he received from Trooper R.F. Szczepanski, seeking special consideration on behalf of the defendant.

9. On December 10, 1975, respondent reduced a charge of speeding to failing to keep right in People v. Myron W. Culver as a result of a written communication he received from Justice John L. Johnson of the Town Court of Henrietta, seeking special consideration on behalf of the defendant.

10. On December 10, 1975, respondent reduced a charge of speeding to driving with an inadequate muffler in People v. Sidney Bronstein as a result of a written communication he

received from Justice Jack Schultz of the Town Court of DeWitt, seeking special consideration on behalf of the defendant.

11. On January 8, 1976, respondent reduced a charge of speeding to driving with an inadequate muffler in People v. Raymond Bragaghola as a result of a written communication he received from Justice George Field of the Town Court of Lafayette, seeking special consideration on behalf of the defendant.

12. On February 12, 1976, respondent reduced a charge of speeding to driving with an inadequate muffler in People v. Samuel A. Vallerian as a result of a written communication he received from Justice Anthony P. Errico of the Town Court of Gates, or someone at Judge Errico's request, seeking special consideration on behalf of the defendant.

13. On April 1, 1976, respondent reduced a charge of speeding to driving with an inadequate muffler in People v. Richard A. D'Imperio as a result of a written communication he received from Deputy Fire Commissioner Thomas L. DiMaria of the City of Rochester, seeking special consideration on behalf of the defendant.

14. On April 7, 1976, respondent reduced a charge of speeding to driving without a valid inspection in People v. Christopher J. Polito as a result of a communication he received from Trooper G.E. Wood, seeking special consideration on behalf of the defendant.

15. On July 7, 1976, respondent reduced a charge of failing to comply with a sign to driving with an unsafe tire in People v. Bruce L. Dent as a result of a written communication he received from Trooper Ed Cayples, seeking special consideration on behalf of the defendant.

16. On October 30, 1976, respondent reduced a charge of speeding to driving with an inadequate muffler in People v. Hazel Little as a result of a written communication he received from Trooper Ed Cayples, seeking special consideration on behalf of the defendant.

17. On December 9, 1976, respondent reduced a charge of speeding to driving with an inadequate muffler in People v. Shirley A. Fanara as a result of a written communication he received from Trooper Jim Cackett, seeking special consideration on behalf of the defendant, Trooper Cackett's sister-in-law.

18. On March 31, 1977, respondent reduced a charge of speeding to driving with an unsafe tire in People v. Thomas J. Ennis as a result of a written communication he received from Investigator W.J. Tumulty of the New York State Police, seeking special consideration on behalf of the defendant.

19. On May 5, 1977, respondent reduced a charge of speeding to driving with an inadequate muffler in People v. Susan E. Batty as a result of a written communication he received from Justice H. Andrew Batty of the Town Court of Tyre, seeking special consideration on behalf of the defendant, Judge Batty's daughter.

20. On June 9, 1977, respondent reduced a charge of speeding to driving with an inadequate muffler in People v. Ernest G. Homokay as a result of a written communication he received from Trooper M.E. Thorpe, seeking special consideration on behalf of the defendant.

21. On June 15, 1977, respondent reduced a charge of speeding to driving with an inadequate muffler in People v. Helene L. Klein as a result of a written communication he received from someone at the request of Justice Joseph L. Thomson of the Town Court of Cornwall, seeking special consideration on behalf of the defendant.

22. On June 15, 1977, respondent reduced a charge of speeding to driving with an inadequate muffler in People v. Robert O. Ruch as a result of a written communication he received from Trooper T.M. Campbell, seeking special consideration on behalf of the defendant, Trooper Campbell's brother-in-law.

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 XXII 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 misconduct, 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 acceding to 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.

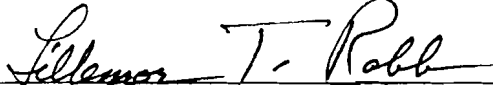
In Matter of Byrne, N.Y.L.J. Apr. 20, 1978, p. 5 (Ct. on the Judiciary, Apr. 18, 1978), the court declared that a "judicial officer who accords or requests special treatment or favoritism to a defendant in his court or another judge's court is guilty of malum in se misconduct constituting cause for discipline." 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 unanimously 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: September 6, 1979
Albany, New York

APPEARANCES:

Gerald Stern for the Commission (Lester C. Goodchild, Christopher
B. Ashton, Judith Siegel-Baum, Of Counsel)
Clark J. Zimmerman for Respondent