

**State of New York**  
**Commission on Judicial Conduct**

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In the Matter of the Proceeding Pursuant to Section 44,  
subdivision 4, of the Judiciary Law in Relation to

FLOYD E. LINN,

a Justice of the Town Court of Clay,  
Onondaga County.

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**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, Floyd E. Linn, a justice of the Town Court of Clay, Onondaga County, was served with a Formal Written Complaint dated January 26, 1979, setting forth nine charges relating to the improper assertion of influence in traffic cases. Respondent filed an answer dated March 23, 1979.

By order dated May 7, 1979, the Commission appointed Saul H. Alderman, Esq., as referee to hear and report to the Commission with respect to the facts herein. A hearing was held on July 18, 1979, and the report of the referee, dated October 17, 1979, was filed with the Commission.

By notice dated January 9, 1980, the administrator moved to confirm the referee's report and for a determination

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that respondent be censured. By notice dated January 16, 1980, respondent cross-moved for a determination dismissing the Formal Written Complaint. The administrator filed a reply memorandum. Respondent waived oral argument.

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

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

1. Charge I: On April 23, 1975, respondent communicated with Justice Duane Algire of the Town Court of Barker, seeking special consideration on behalf of respondent's brother, the defendant in People v. Carl E. Linn, a case then pending before Judge Algire.

2. Charge II: On February 27, 1973, respondent reduced a charge of speeding to driving with an inadequate muffler in People v. Michael L. Goglia as a result of a written communication he received from Justice Frank Stritter of the Village Court of Cazenovia, seeking special consideration on behalf of the defendant.

3. Charge IV: On August 9, 1973, respondent reduced a charge of speeding to driving with an inadequate muffler in People v. Denise C. Pickens as a result of a communication he received from Police Chief Bastable of the Village of Minoa, or someone at Chief Bastable's request, seeking special consideration on behalf of the defendant.

4. Charge V: On August 28, 1973, respondent reduced a charge of speeding to passing in a no passing zone in People v. Kimberly A. Dwyer as a result of a communication he received from Harvey Chase, Town Justice of Cicero, seeking special consideration on behalf of the defendant.

5. Charge VI: On January 8, 1974, respondent reduced a charge of speeding to driving with an inadequate muffler in People v. Michael L. Roder as a result of a communication he received from Police Officer Benedict of the Town of Clay, seeking special consideration on behalf of the defendant.

6. Charge VII: On June 4, 1974, respondent reduced a charge of passing a red light to driving with an inadequate muffler in People v. Peter A. Black as a result of a communication he received from Police Chief John Kerr of the Town of Clay, seeking special consideration on behalf of the defendant.

7. Charge VIII: On August 7, 1974, respondent reduced a charge of speeding to driving with an unsafe tire in People v. Patricia A. Krisak as a result of a written communication he received from Assistant District Attorney Morris Schneider seeking special consideration on behalf of the defendant.

8. Charge IX: On January 25, 1977, respondent reduced a charge of speeding to driving with an inadequate muffler in People v. Robert A. Tringali as a result of a communication he received from Trooper Fiscoe 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, II and IV through IX 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 granting ex parte requests from other judges and persons of influence, for favorable dispositions for defendants in traffic cases, and by making such a request, respondent violated the Rules enumerated above.

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.

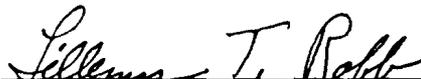
In Matter of Byrne, 420 NYS2d 70 (Ct. on the Judiciary 1979), the court declared that a "judicial officer who accords or requests special treatment or favoritism to a defendant in his court or another judge's court is guilty of malum in se misconduct constituting cause for discipline." In that case,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

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 (Alan W. Friedberg and Judith Seigel-Baum, Of Counsel)  
for the Commission

Jon W. Brenizer for Respondent