

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

FRANK J. McDONALD,

a Justice of the Village Court
of Catskill, Greene 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, Frank J. McDonald, a justice of the Village Court of Catskill, Greene County, was served with a Formal Written Complaint dated July 27, 1978, setting forth 22 charges of misconduct relating to the improper assertion of influence in traffic cases. In his answer dated October 5, 1978, respondent admitted in part and denied in part the factual allegations, denied having violated the ethical standards cited in the Formal Written Complaint, and asserted certain affirmative defenses.

The administrator of the Commission moved for summary determination on March 8, 1979, pursuant to Section 7000.6(c)

of the Commission's rules (22 NYCRR 7000.6[c]). The Commission granted the motion on April 17, 1979, finding respondent guilty of misconduct with respect to Charge I and Charges IV through XXII, dismissing Charges II and III on motion of the administrator, and setting a date for oral argument on the issue of an appropriate sanction. The administrator submitted a memorandum in lieu of oral argument. Respondent waived both oral argument and a memorandum.

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.

Charges II and III of the Formal Written Complaint are dismissed.

With respect to Charge I and Charges IV through XXII, the Commission finds as follows:

1. On December 13, 1975, respondent sent a letter to Justice Charles Crommie of the Town Court of Catskill, seeking special consideration on behalf of the defendant in People v. George H. Rogers, a case then pending before Judge Crommie.

2. On January 3, 1973, respondent reduced a charge of driving while intoxicated to speeding in People v. Joseph Suto as a result of written communications he received from Judge John E. Holt-Harris, Jr., of the Albany City Traffic Court, seeking special consideration on behalf of the defendant.

3. On March 3, 1973, respondent reduced a charge of speeding to driving with unsafe tires in People v. Michael Hodor as a result of a written communication he received from

Justice Charles Crommie of the Town Court of Catskill, seeking special consideration on behalf of the defendant.

4. On June 15, 1973, respondent reduced a charge of speeding to driving with unsafe tires in People v. Werner Berge as a result of a written communication he received from Justice Judson Wright of the Town Court of Coxsackie, seeking special consideration on behalf of the defendant.

5. On August 7, 1973, respondent (i) reduced a charge of driving while intoxicated to speeding, (ii) reduced a charge of speeding to driving with an unsafe tire and (iii) dismissed a charge of failure to keep right in People v. Henry Schaefer, as a result of a communication he received from Justice George Carl of the Town Court of Catskill, or someone at Judge Carl's request, seeking special consideration on behalf of the defendant.

6. On August 17, 1973, respondent reduced a charge of speeding to driving with unsafe tires in People v. Alberti E. Clyde as a result of a written communication he received from Justice Charles Crommie of the Town Court of Catskill, seeking special consideration on behalf of the defendant.

7. On August 21, 1973, respondent reduced a charge of speeding to driving with unsafe tires in People v. Dyann Filinger as a result of a communication he received from Justice Nicholas Bier of the Town Court of Cairo and Justice George Carl of the Town Court of Catskill, or someone at their request, seeking special consideration on behalf of the defendant.

8. On August 28, 1973, respondent reduced a charge of speeding to driving with unsafe tires in People v. Nicholas Olivetti as a result of a communication he received from Justice George Carl of the Catskill Town Court, or someone at Judge Carl's request, seeking special consideration on behalf of the defendant.

9. On December 24, 1973, respondent reduced a charge of speeding to driving with an inadequate muffler in People v. Delores Smith as a result of a written communication he received from Judge Harold Liebman of the Hudson City Court, seeking special consideration on behalf of the defendant.

10. On March 11, 1974, respondent reduced a charge of speeding to driving with a faulty muffler in People v. Thomas Brownlie as a result of a written communication he received from Justice Robert Diamond of the Town Court of Marbletown, seeking special consideration on behalf of the defendant.

11. On May 14, 1974, respondent imposed an unconditional discharge in People v. Kenneth Dudley as a result of a written communication he received from Justice Edward F. Jones of the Town Court of Coeymans, or someone at Judge Jones' request, seeking special consideration on behalf of the defendant.

12. On July 15, 1974, respondent reduced a charge of speeding to driving with unsafe tires in People v. Esther Tozzi as a result of a written communication he received from Justice Nicholas Bier of the Town Court of Cairo, seeking special consideration on behalf of the defendant.

13. On November 8, 1974, respondent reduced a charge of speeding to driving with an inadequate muffler in People v.

Jade J. Hawthorne as a result of a written communication he received from Justice Charles Crommie of the Town Court of Catskill, seeking special consideration on behalf of the defendant.

14. On March 21, 1975, respondent imposed an unconditional discharge in People v. Leila June as a result of a written communication he received from Justice George Carl of the Town Court of Catskill, or someone at Judge Carl's request, seeking special consideration on behalf of the defendant.

15. On April 28, 1975, respondent reduced a charge of speeding to driving with unsafe tires in People v. Francis Burden as a result of a written communication from Peter Savago, Chairman of the Ulster County Legislature, seeking special consideration on behalf of the defendant.

16. On June 17, 1975, respondent imposed an unconditional discharge in People v. John Kneer as a result of a written communication he received from Justice Joseph Reich of the Village Court of Tannersville, or someone at Judge Reich's request, seeking special consideration on behalf of the defendant.

17. On July 8, 1975, respondent reduced a charge of speeding to driving with unsafe tires in People v. Johanne Larsen as a result of a written communication he received from Justice Nicholas Bier of the Town Court of Cairo, seeking special consideration on behalf of the defendant.

18. On July 30, 1975, respondent reduced a charge of speeding to driving with an inadequate muffler in People v.

Rosemary German as a result of a written communication he received from Justice Charles Crommie of the Town Court of Catskill, seeking special consideration on behalf of the defendant.

19. On September 3, 1975, respondent reduced a charge of speeding to driving with unsafe tires in People v. Richard Swartout as a result of a written communication he received from Neal Brandow, Greene County Clerk, seeking special consideration on behalf of the defendant.

20. On August 9, 1976, respondent reduced a charge of speeding to driving with an inadequate muffler in People v. Katherine Haines as a result of a written communication he received from Justice Charles Crommie of the Town Court of Catskill 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 and IV through XXII of the Formal Written Complaint are sustained, and respondent is thereby guilty of misconduct. The Commission finds that the affirmative defense to Charges VIII and X is not sustained, and that, under the facts herein, the consent of the arresting officers to reductions of the respective charges is no defense.

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 an ex parte request of another judge for a favorable disposition for the defendant in a traffic case, and 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.

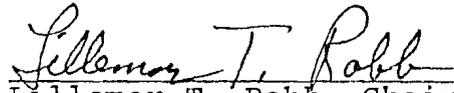
In Matter of Byrne, N.Y.L.J. Apr. 20, 1978, p. 5 (Ct. on the Judiciary, Apr. 18, 1978), the court declared that a "judicial officer who accords or requests special treatment or favoritism to a defendant in his court or another judge's court is guilty of malum in se misconduct constituting cause for discipline."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

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:

Alex Wiltse, Jr. for Respondent

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