

STATE OF NEW YORK  
COMMISSION ON JUDICIAL CONDUCT

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In the Matter :  
- of - :  
LYLE McDOWELL, :  
a Justice of the Town Court of :  
Mt. Hope and the Village Court of :  
Otisville in Orange County. :  
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DETERMINATION

STATE COMMISSION ON  
JUDICIAL CONDUCT

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PRELIMINARY STATEMENT

This Determination of the State Commission on Judicial Conduct (hereinafter the "Commission") is submitted in accordance with Article VI, Section 22, of the Constitution of the State of New York, and Article 2-A of the Judiciary Law as amended effective April 1, 1978, (hereinafter "amended Judiciary Law"), for transmittal by the Chief Judge of the Court of Appeals to the Honorable Lyle McDowell (hereinafter "respondent").

Respondent is a justice of the Town Court of Mt. Hope and the Village Court of Otisville in Orange County. He is not an attorney. He first took office in the Town of Mt. Hope in 1969 and in the Village of Otisville in March 1966. His current term of office as Mt. Hope Town Justice expires on December 31, 1981. His current term as Otisville Village Court Justice expires in April 1982.

The investigation in this matter was commenced on May 25, 1977, by the former State Commission on Judicial Conduct (hereinafter "former Commission") pursuant to Section 43, subdivision 2, of the Judiciary Law then in effect (hereinafter "former Judiciary Law"). In the course of its investigation, the

former Commission discovered seven instances in which respondent made ex parte requests of other judges for favorable dispositions for defendants in traffic cases.

Pursuant to Section 43, subdivision 5, of the former Judiciary Law, the former Commission determined that cause existed to conduct a hearing. On November 23, 1977, respondent was served with a Notice of Hearing and a Formal Written Complaint, copies of which are hereto attached. In a verified Answer dated December 2, 1977, submitted by his counsel, a copy of which is hereto attached, respondent admitted all the factual allegations in the Formal Written Complaint. In a Memorandum of Law dated January 13, 1978, submitted by his counsel, a copy of which is hereto attached, respondent waived his right to a hearing.

Pursuant to Section 43, subdivision 7, of the former Judiciary Law, on March 13, 1978, the former Commission forwarded its Determination of public censure to the Chief Judge of the Court of Appeals, for transmittal by him to respondent. In a letter to the Commission dated March 16, 1978, the Chief Judge stated that it would be improper to transmit the Determination to the respondent, inasmuch as the pertinent provisions of the former Judiciary Law would be in effect only through March 31, 1978.\* Consequently, the Determination was not transmitted to respondent.

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\*The former Judiciary Law provided that a respondent seeking review of a Determination filed by the former Commission could request the convening of a Court on the Judiciary for this purpose within 30 days of receipt of the Determination. The amended Judiciary Law provides that no new Court on the Judiciary could be convened on or after April 1, 1978. Thus, respondent's 30-day privilege to request convening of a Court on the Judiciary would have extended beyond April 1, 1978, the date after which no new Court could have been convened.

Section 48 of the amended Judiciary Law provides for the transfer to the Commission and continuance of all matters left pending by the former Commission and for which Courts on the Judiciary had not been convened, as of April 1, 1978.

This Determination, with findings of fact and conclusions of law as set forth below, is filed by the Commission in accordance with the provisions in Section 44, subdivision 7, of the amended Judiciary Law, for transmittal by the Chief Judge of the Court of Appeals to respondent.

#### FINDINGS OF FACT

On October 15, 1974, respondent sent a letter, on stationery which identifies him as a judge, to a justice of the Town Court of Wallkill, requesting favorable consideration for the defendant, who was charged with speeding, in People v. Kathryn C. Sheridan, a case then pending before Judge James M. McMahon of that court.

On October 15, 1974, respondent sent a letter, on stationery which identifies him as a judge, to Judge Murry Gaiman of the Town Court of Fallsburg, requesting favorable consideration for the defendant, who was charged with speeding, in People v. T.L. Carrothers, Jr., a case then pending before Judge Gaiman.

On December 15, 1975, respondent sent a letter on official court stationery to Judge Joseph Thomson of the Town Court of Cornwall, requesting favorable consideration for the defendant who was charged with speeding, in People v. Erwin Breitt, a case then pending before Judge Thomson.

On April 20, 1976, respondent sent a letter, on stationery which identifies him as a judge, to Judge Charles Shaughnessy of the Town Court of Chester, requesting a favorable disposition for the defendant, who was charged with speeding, in People v. Camille T. Dabenigno, a case then pending before Judge Shaughnessy.

On July 6, 1976, respondent sent a letter on official court stationery to Judge Thomas Byrne of the Town Court of Newburgh, requesting favorable consideration for the defendant, who was charged with speeding, in People v. Gust Tsounis, a case then pending before Judge Byrne.

On August 16, 1976, respondent sent a letter on official court stationery to Judge Earle H. Houghtaling, requesting favorable consideration for the defendant, who was charged with operating an uninspected motor vehicle, in People v. Charles L. Ketcham, a case then pending before Judge Houghtaling.

On February 14, 1977, respondent, or someone at his request, communicated with Judge Horace Sawyer of the Village Court of Goshen on behalf of the defendant in People v. Robert A. Cromie, a case then pending before Judge Sawyer.

#### CONCLUSIONS OF LAW

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 for reasons that have nothing to do with the circumstances of the case. 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 was in violation of Sections 33.1, 33.2, 33.3(a)(1) and 33.3(a)(4) of the Rules Governing Judicial Conduct of the Administrative Board of the Judicial Conference, and Canons 1, 2 and 3A of the Code of Judicial Conduct, 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)]

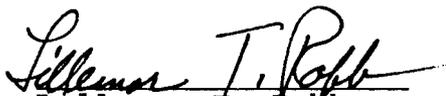
Courts in this state and other jurisdictions have found that favoritism is serious judicial misconduct and that ticket-fixing (similar if not identical to that activity of respondent) is a form of favoritism.

In Matter of Byrne, N.Y.L.J. April 20, 1978, vol. 179, p.5 (Ct. on the Judiciary), the Court on the Judiciary 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.

DETERMINATION

By reason of the foregoing, in accordance with Article VI, Section 22, of the Constitution of the State of New York, and Section 44, subdivision 7, of the amended Judiciary Law, the State Commission on Judicial Conduct has determined that respondent should be publicly censured.

  
Lillemor T. Robb  
Chairwoman

Dated: New York, New York  
December 13, 1978

APPEARANCES:

Veraldi, Van Fleet & Eager (By Samuel W. Eager, Jr.) for Respondent  
Gerald Stern (Stephen F. Downs, Of Counsel) for the Commission