

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

GEORGE R. MURTAUGH,

a Justice of the Town Court of
Frankfort, Herkimer County.

Determination

BEFORE: Mrs. Gene Robb, Chairwoman
Honorable Fritz W. Alexander, II
David Bromberg, Esq.
Honorable Richard J. Cardamone
Dolores DelBello
Michael M. Kirsch, Esq.
William V. Maggipinto, Esq.
Honorable Isaac Rubin
Honorable Felice K. Shea

APPEARANCES:

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

Dominic J. Zito for Respondent

The respondent, George R. Murtaugh, a Justice of the Town Court of Frankfort, Herkimer County, was served with a Formal Written Complaint dated May 22, 1979, alleging misconduct with respect to five traffic cases. Respondent filed an answer dated June 28, 1979.

By order dated September 4, 1979, the Commission designated Gray Thoron, Esq., as referee to hear and report proposed findings of fact and conclusions of law. The hearing was held on

January 17, 1980, and the report of the referee was filed on July 2, 1980.

By motion dated October 1, 1980, the administrator of the Commission moved to confirm the referee's report and for a determination that respondent be censured. Respondent did not submit papers in response. The Commission heard oral argument on the motion on December 17, 1980, at which respondent and his counsel were heard, thereafter considered the record of the proceeding and now makes the following findings of fact.

1. Charge I: On May 23, 1978, respondent sent a letter on official stationery to Lancaster Town Court Justice J. Michael Kelleher, seeking special consideration on behalf of the defendant in People v. John F. Pizzo, a case then pending before Judge Kelleher. Respondent stated that in writing the letter he "hoped that the presiding magistrate would not levy an excessive fine."

2. Charge II: On September 12, 1973, respondent sent a letter on official stationery to Plattekill Town Court Justice Wayne Smith, seeking special consideration on behalf of the defendant in People v. Joseph DeLuke, a case then pending before Judge Smith.

3. Charge III: On November 10, 1975, respondent communicated with Glen Town Court Justice James Brookman, seeking special consideration on behalf of the defendant in People v. John J. Caruso, a case then pending before Judge Brookman.

4. Charge IV: Between July 29, 1973, and April 16, 1974, respondent communicated with Kirkland Town Court Justice Vincent P. Scholl, seeking special consideration on behalf of the defendant in People v. Anthony Farouche, a case then pending before Judge Scholl.

5. Charge V: On September 18, 1973, respondent communicated with Lafayette Town Court Justice Malcolm W. Knapp, seeking special consideration on behalf of the defendant in People v. Frank Grippe, a case then pending before Judge Knapp.

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 V 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 grant special consideration to a defendant. 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 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 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, 47 NY2d(b) (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 (c).

While every instance of ticket-fixing is wrong and must be condemned, respondent's request for favorable consideration in the Pizzo case is particularly disturbing, coming as it did nearly five months after the first Commission censure of a judge for ticket-fixing (Matter of Edmund Quinones, Dec. 31, 1977), over eleven months after the Commission's widely-reported interim report

on ticket-fixing (Interim Report: June 20, 1977), and over eight months after respondent had received an inquiry from the Commission concerning his conduct in the DeLuke case (Charge II). In the instant proceedings, respondent has said both that he had merely forwarded Mr. Pizzo's ticket to the presiding judge and that he had written hoping the fine on Mr. Pizzo would not be excessive. In either event, there was no excuse for respondent's sending the ex parte letter. Furthermore, we note that there is no explanation in the record why it was respondent who "forwarded" the plea instead of some relative or other friend of the defendant's.

It is not necessary for a judge specifically to request a favor in order for his interest in a favorable result to be conveyed. The inevitable result of an ex parte letter from one judge to another on behalf of a defendant is to establish that the writing judge has a special interest in the outcome of the case and to convey that special interest to the receiving judge. Whether or not the receiving judge then actually accommodates the result of the case by granting special consideration to the defendant is irrelevant to the misconduct of the writing judge.

By May 23, 1978, when he wrote the letter in the Pizzo case, respondent knew or should have known the impropriety and appearance of impropriety inherent in his action. Whatever uncertainty there may have been in the past about the propriety of one judge writing an ex parte letter to another judge on behalf of a traffic defendant, the public record condemning such conduct had been unequivocally established well before the date of respondent's letter in Pizzo.

The Pizzo case represents the first time the Commission has found misconduct in a ticket-fixing incident which occurred after publication of the Commission's Interim Report in June 1977 and after a public determination of censure by the Commission in a ticket-fixing case.

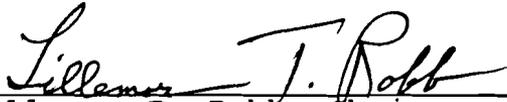
By reason of the foregoing, the Commission determines that the appropriate sanction is censure.

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.

Dated: February 25, 1981
Albany, New York


Lillemor T. Robb, Chairwoman
New York State Commission on
Judicial Conduct