

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

THOMAS J. O'CONNELL,

a Justice of the Brutus Town Court,
Cayuga 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
Honorable Isaac Rubin
Honorable Felice K. Shea
Carroll L. Wainwright, Jr.

Respondent, Thomas J. O'Connell, a justice of the Town Court of Brutus, Cayuga County, was served with a Formal Written Complaint dated February 6, 1979, setting forth 20 charges relating to the improper assertion of influence in traffic cases. Respondent filed an amended answer dated November 9, 1979.

By notice dated December 6, 1979, the administrator of the Commission moved for summary determination pursuant to Section 7000.6(c) of the Commission's rules (22 NYCRR 7000.6[c]). Respondent did not oppose the motion. By determination and order dated January 30, 1980, the Commission granted the motion, found respondent's misconduct established with respect to all 20 charges in the Formal

Written Complaint, and set a date for oral argument on the issue of an appropriate sanction. The administrator submitted a memorandum in lieu of oral argument. Respondent waived oral argument and submitted a letter on sanction.

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

1. Charge I: On November 18, 1976, respondent reduced a charge of speeding to driving with an unsafe tire in People v. Ellen M. Antinelli as a result of a written communication he received from Anthony J. Casamassima, Chief of Police of Seneca Falls, seeking special consideration on behalf of the defendant.

2. Charge II: On March 8, 1973, respondent reduced a charge of speeding to driving with an inadequate muffler in People v. Anthony V. Bankit as a result of a written communication he received from Justice Steve A. Skramko of the Town Court of Warren, seeking special consideration on behalf of the defendant.

3. Charge III: On January 8, 1976, respondent reduced a charge of speeding to driving with an unsafe tire in People v. Gino C. Cracolici as a result of a written communication he received from Justice Edward A. Lahey of the Town Court of New Windsor, seeking special consideration on behalf of the defendant.

4. Charge IV: On November 6, 1975, respondent reduced a charge of speeding to driving with an inadequate muffler

in People v. Vincent L. Fedele as a result of a written communication he received from James R. Burke of the Monroe County District Attorney's office, seeking special consideration on behalf of the defendant.

5. Charge V: On November 27, 1976, respondent reduced a charge of speeding to driving with an unsafe tire in People v. Edward Funda as a result of a written communication he received from Justice James S. Jerome of the Town Court of Geddes, seeking special consideration on behalf of the defendant.

6. Charge VI: On August 3, 1973, respondent reduced a charge of speeding to driving with an inadequate muffler in People v. Leo S. Greaser as a result of a written communication he received from Justice Sebastian Lombardi of the Town Court of Lewiston, seeking special consideration on behalf of the defendant.

7. Charge VII: On April 11, 1973, respondent accepted the forfeiture of bail in lieu of further prosecution of a charge of speeding in People v. Eugene Harvey as a result of a written communication he received from Justice John G. Gamble of the Town Court of Lewiston, seeking special consideration on behalf of the defendant, Judge Gamble's cousin.

8. Charge VIII: On July 16, 1976, respondent reduced a charge of speeding to driving with an unsafe tire in People v. Sam Jowdy as a result of a written communication he received from Justice Sebastian Lombardi of the Town Court of Lewiston, seeking special consideration on behalf of the defendant.

9. Charge IX: On April 10, 1973, respondent reduced a charge of speeding to driving with an inadequate muffler in People v. James Milne as a result of a written communication he received from Justice Sebastian Lombardi of the Town Court of Lewiston, seeking special consideration on behalf of the defendant.

10. Charge X: On June 30, 1975, respondent accepted the forfeiture of bail in lieu of further prosecution of a charge of speeding in People v. Anthony Mustille as a result of a written communication he received from Justice William B. Van Nostrand of the Town Court of Ovid, seeking special consideration on behalf of the defendant.

11. Charge XI: On August 24, 1973, respondent reduced a charge of speeding to driving with an unsafe tire in People v. Harold L. Peters as a result of a written communication he received from Justice Vernon F. Troyer of the Town Court of Wheatfield, seeking special consideration on behalf of the defendant.

12. Charge XII: On January 27, 1973, respondent reduced a charge of speeding to driving with an inadequate muffler in People v. Julia J. Quarcini as a result of a written communication he received from Justice Sebastian Lombardi of the Town Court of Lewiston, seeking special consideration on behalf of the defendant.

13. Charge XIII: On November 25, 1973, respondent reduced a charge of speeding to driving with an inadequate muffler in People v. Samuel V. Sicilia, Jr., as a result of a written com-

munication he received from Justice Michael A. Perretta of the Town Court of Lenox, seeking special consideration on behalf of the defendant.

14. Charge XIV: On January 31, 1975, respondent reduced a charge of speeding 90 m.p.h. in a 55 m.p.h. zone to speeding 75 m.p.h. in a 55 m.p.h. zone in People v. Angelo Sparaco as a result of a written communication he received from Justice Arthur A. Reilly of the Town Court of Ulster, seeking special consideration on behalf of the defendant.

15. Charge XV: On January 20, 1975, respondent reduced a charge of speeding to driving with an unsafe tire in People v. Valere H. Upchurch as a result of a written communication he received from Justice Carlton M. Chase of the Village Court of Chittenango, seeking special consideration on behalf of the defendant.

16. Charge XVI: On April 24, 1974, respondent reduced a charge of speeding to failing to keep right in People v. Peter A. Weitzman as a result of a written communication he received from Justice Helen Burnham of the Town Court of Salina, seeking special consideration on behalf of the defendant.

17. Charge XVII: On October 23, 1975, respondent reduced a charge of speeding to driving with an inadequate muffler in People v. James A. Coogan as a result of a written communication he received from Ralph C. Bagnett, Public Safety Commissioner of the Town of Clay, or someone at Commissioner Bagnett's request, seeking special consideration on behalf of the defendant.

18. Charge XVIII: On October 30, 1975, respondent reduced a charge of speeding to driving with an inadequate muffler in People v. Thomas D. Joseph as a result of a communication he received from Justice Edward Jones of the Town Court of Coeymans, or someone at Judge Jones' request, seeking special consideration on behalf of the defendant.

19. Charge XIX: On April 14, 1973, respondent reduced a charge of speeding to driving with an inadequate muffler in People v. Ray F. Martino, Jr., as a result of a communication he received from Justice Michael Perretta of the Town Court of Lenox, or someone at Judge Perretta's request, seeking special consideration on behalf of the defendant.

20. Charge XX: On May 17, 1973, respondent imposed an unconditional discharge in People v. Albert Zalatan as a result of a written communication he received from Justice Ina Sowle of the Town Court of Providence, 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 through XX 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 judges and other persons of influence, 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 relationship 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, 420 NYS2d 70 (Ct. on the Judiciary 1979), the court declared that a "judicial officer who accords

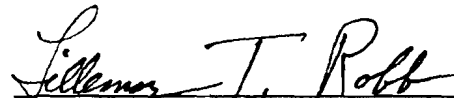
or requests special treatment or favoritism to a defendant in his court or another judge's court is guilty of malum in se misconduct constituting cause for discipline." In that case, ticket-fixing was equated with favoritism, which the court stated was "wrong and has always been wrong." Id. at 71-72.

By reason of the foregoing, the Commission determines that the appropriate sanction is 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: May 20, 1980
Albany, New York

APPEARANCES:

Gerald Stern (Stanley A. Bass, Of Counsel) for the Commission

Thomas J. O'Connell Respondent *Pro Se*