

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

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

JOHN O'CONNOR, :

a Justice of the Wawayanda Town Court, :
Orange County. :

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PRESENT: 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

The respondent, John O'Connor, a justice of the Town Court of Wawayanda, Orange County, was served with a Formal Written Complaint dated August 3, 1978, setting forth ten charges of misconduct relating to the improper assertion of influence in traffic cases. In his answer, dated August 22, 1978, respondent denied all the charges.

The administrator of the Commission, respondent and respondent's counsel entered into an agreed statement of facts on February 15, 1979, pursuant to Section 44, subdivision 5, of the Judiciary Law, waiving the hearing provided for by Section 44, subdivision 4, of the Judiciary Law and stipulating that the

Commission make its determination upon the pleadings and the facts as agreed upon. At the same time, respondent withdrew his answer which denied all the charges set forth in the Formal Written Complaint.

The Commission approved the agreed statement of facts on February 27, 1979, determined that no outstanding issue of fact remained, and set a date for oral argument to determine (i) whether to make a finding of misconduct and (ii) an appropriate sanction, if any. The administrator and respondent submitted memoranda.

The Commission heard oral argument on May 21, 1979, thereafter considered the record in this proceeding, and upon that record finds the following facts:

1. On November 2, 1974, respondent sent a letter to Justice Charles Shaughnessy of the Chester Town Court, seeking special consideration on behalf of the defendant in People v. Norma Moshinski, a case then pending before Judge Shaughnessy.
2. On November 15, 1974, respondent sent a letter to Justice Earle H. Houghtaling of the Walden Village Court, seeking special consideration on behalf of the defendant in People v. Dean Kross, a case then pending before Judge Houghtaling.
3. On September 5, 1974, respondent communicated with Justice Horace C. Sawyer of the Goshen Town Court, seeking special consideration on behalf of the defendant in People v. Robert E. Neilly, a case then pending before Judge Sawyer.

4. On March 11, 1975, respondent communicated with Justice James McMahon of the Wallkill Town Court, seeking special consideration on behalf of the defendant in People v. Peter Vriesema, a case then pending before Judge McMahon.

5. On July 30, 1976, respondent sent a letter to the Justice of the Town Court of Thompson, seeking special consideration on behalf of the defendant in People v. Shoioch, a case then pending in the Town Court of Thompson.

6. On March 29, 1974, respondent reduced a charge of driving while intoxicated to speeding in People v. Stanley Smith as a result of a written communication he received from Justice Albert Lockwood of the Livingston Town Court, seeking special consideration on behalf of the defendant.

7. On April 24, 1975, respondent reduced a charge of speeding to driving with unsafe tires in People v. Richard E. Burns as a result of a communication he received from someone at the Poughkeepsie City Court, seeking special consideration on behalf of the defendant.

8. On December 18, 1975, respondent reduced a charge of speeding to driving with unsafe tires in People v. Valerie G. Gaer as a result of a communication he received from Justice John Ehre of the Deerpark Town Court, or someone at Judge Ehre's request, seeking special consideration on behalf of the defendant.

9. On September 10, 1976, respondent reduced a charge of speeding to driving with unsafe tires in People v.

Henry Leak III, as a result of a request for special consideration on behalf of the defendant.

10. Charge IX of the Formal Written Complaint is dismissed upon consideration of paragraph 7 in the agreed statement of facts.

Based 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 VIII and X of the Formal Written Complaint are sustained, and respondent is thereby guilty of misconduct.

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 misconduct, as is the judge who made the request. By making ex parte requests of other judges for favorable dispositions for defendants in traffic cases, and by acceding to 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. 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.

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

This determination constitutes the findings of fact and conclusions of law required by Section 44, subdivision 7, of the Judiciary Law.

All concur.

Dated: July 10, 1979