

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

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

MICHAEL A. PASCALE, :

a Justice of the Town Court of :
Marlborough, Ulster County. { :

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PRESENT: Mrs. Gene Robb
David Bromberg, Esq.
Honorable Richard J. Cardamone
Dolores DelBello
Michael M. Kirsch, Esq.
Victor A. Kovner, Esq.
William V. Maggipinto, Esq.
Honorable Isaac Rubin
Honorable Felice K. Shea
Carroll L. Wainwright, Jr., Esq.

PRELIMINARY STATEMENT

This determination of the State Commission on Judicial Conduct ("Commission") is filed in accordance with Article VI, Section 22, of the Constitution of the State of New York, and Article 2-A of the Judiciary Law, for service by the Chief Judge of the Court of Appeals upon the Honorable Michael A. Pascale ("respondent").

On October 12, 1978, pursuant to Section 44, subdivision 4, of the Judiciary Law, respondent was served with a Formal Written Complaint, setting forth five charges of misconduct relating to the improper assertion of influence in traffic

cases. In his answer, dated October 25, 1978, respondent admitted the allegations set forth in the Formal Written Complaint, either explicitly or by his failure to deny same. See, Operating Procedures and Rules of the State Commission on Judicial Conduct ("Commission Rules") § 7000.6(b), 22 NYCRR 7000.6(b).

On January 17, 1979, the administrator of the Commission moved for summary determination, pursuant to Section 7000.6(c) of the Commission Rules. The Commission, with all members present and concurring, granted the administrator's motion on January 24, 1979, finding respondent guilty of judicial misconduct and setting down oral argument on the issue of an appropriate sanction on February 27, 1979. Respondent waived oral argument in a letter dated February 16, 1979.

This determination is filed pursuant to Section 44, subdivision 7, of the Judiciary Law, with findings of fact and conclusions of law as set forth below.

FINDINGS OF FACT

1. On April 1, 1977, respondent sent to Judge Charles Shaughnessy of the Chester Town Court a letter, seeking special consideration on behalf of the defendant in People v. Anthony Frasca, a case then pending before Judge Shaughnessy.

2. On March 29, 1976, respondent sent to Judge Edward Lahey of the New Windsor Town Court a letter, seeking special consideration on behalf of the defendant in People v. Robert Homestead, a case then pending before Judge Lahey.

3. On September 13, 1973, respondent sent to the presiding judge of the Highlands Town Court a letter, seeking

special consideration on behalf of the defendant in People v. Ben Jerminario, a case then pending in that court.

4. On January 25, 1974, respondent sent to Judge Thomas Byrne of the Newburgh Town Court a letter, seeking special consideration on behalf of his cousin, the defendant in People v. Donna Porcelli, a case then pending before Judge Byrne.

5. On September 23, 1974, respondent communicated with Judge Walter Gersten of the Thompson Town Court, seeking special consideration on behalf of the defendant in People v. Anthony Frasca, a case then pending before Judge Gersten.

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.

By making ex parte requests of other judges for favorable dispositions for defendants in traffic cases, respondent violated 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, the Commission concludes that respondent violated the rules and canons set forth in .

Charges I through V of the Formal Written Complaint, and we determine that respondent should be censured.



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

Dated: March 28, 1979
Albany, New York

APPEARANCES:

Michael A. Pascale, Respondent *Pro Se*

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