

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

CHARLES PERSONS,

a Justice of the Florida Town Court,
Montgomery 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
William V. Maggipinto
Honorable Isaac Rubin
Honorable Felice K. Shea
Carroll L. Wainwright, Jr.

Respondent, a justice of the Town Court of Florida,
Montgomery County, was served with a Formal Written Complaint
dated January 29, 1979, setting forth ten charges relating to
the improper assertion of influence in traffic cases. Respondent,
in a letter from his attorney dated August 20, 1979, withdrew
his amended answer.

By notice dated October 3, 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]). Respon-
dent did not oppose the motion. The Commission granted the motion
on October 25, 1979, found respondent's misconduct established with

respect to all ten charges in the Formal Written Complaint, and set a date for oral argument on the issue of an appropriate sanction. The administrator and respondent submitted memoranda in lieu of oral argument.

The Commission considered the record in this proceeding on December 13, 1979, and upon that record makes the following findings of fact.

1. As to Charge I, on April 2, 1976, respondent sent a letter to Justice James Davidson of the Town Court of Queensbury, seeking special consideration on behalf of the defendant in People v. Leon A. Gray, a case then pending before Judge Davidson.

2. As to Charge II, on February 10, 1976, respondent sent a letter to Justice James Corkland of the Town Court of Lake George, seeking special consideration on behalf of the defendant in People v. Carl Graziane, a case then pending before Judge Corkland.

3. As to Charge III, on December 7, 1974, respondent sent a letter to Justice Joseph Thomson of the Town Court of Cornwall, seeking special consideration on behalf of the defendant in People v. Peter J. Parisi, a case then pending before Judge Thomson.

4. As to Charge IV, on March 18, 1976, respondent communicated with Judge Edward Lahey of the Newburgh Town Court seeking special consideration on behalf of the defendant in People v. Timothy A. Quinn, a case then pending before Judge Lahey.

5. As to Charge V, on April 23, 1976, respondent communicated with Justice James Brookman of the Town Court of Glen, seeking special consideration on behalf of the defendant in People v. Robert J. Phelps, a case then pending before Judge Brookman.

6. As to Charge VI, on July 10, 1976, respondent reduced a charge of speeding to driving with unsafe tires in People v. Michael A. Conforti 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.

7. As to Charge VII, on October 15, 1976, respondent reduced a charge of speeding to driving with unsafe tires in People v. Ronald S. Miga as a result of a written communication he received from Justice Stanley Wolanin of the Town Court of Whitestown, seeking special consideration on behalf of the defendant.

8. As to Charge VIII, on April 12, 1976, respondent reduced a charge of speeding to driving with unsafe tires in People v. Wayne Sparre as a result of a written communication he received from Justice Richard A. Folmsbee of the Town Court of Princetown, seeking special consideration on behalf of the defendant.

9. As to Charge IX, on November 16, 1976, respondent reduced a charge of speeding to driving with unsafe tires in People v. Harry M. Huyck as a result of a communication he received from Justice Raymond W. Cashman of the Town Court of German Flatts or someone at Judge Cashman's request, seeking special consideration on behalf of the defendant.

10. As to Charge X, on December 6, 1976, respondent reduced a charge of speeding to driving with unsafe tires in People v. Salvatore J. Guarino as a result of a communication he received from Justice Frank Politano of the Town Court of Perth or someone at Judge Politano's request, 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 and Canons 1, 2 and 3A of the Code of Judicial Conduct. Charges I through X 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 making ex parte requests of other judges for favorable dispositions for the defendants in traffic cases, and by granting such requests, 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.

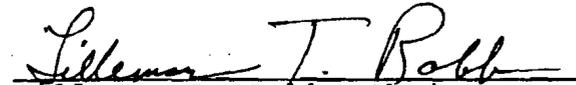
In Matter of Byrne, 420 NYS2d 70 (Ct. on the Judiciary 1978), the court declared that a "judicial officer who accords or requests special treatment or favoritism to a defendant in his court or another judge's court is guilty of malum in se misconduct constituting cause for discipline." In that case, 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: March 11, 1980
Albany, New York

APPEARANCES:

Gerald Stern (Jeanne A. O'Connor, Of Counsel) for the Commission
Campbell & White (By Ronald A. Campbell) for Respondent