

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

Determination

FRANCIS B. PRITCHARD,

a Justice of the Town Court of
Grand Island, Erie County.

BEFORE: Mrs. Gene Robb, Chairwoman
Honorable Fritz W. Alexander, II
John J. Bower, Esq.
E. Garrett Cleary, Esq.
Dolores DelBello
Victor A. Kovner, Esq.
Honorable William J. Ostrowski
Honorable Felice K. Shea
Carroll L. Wainwright, Jr., Esq.

APPEARANCES:

Gerald Stern (John J. Postel, Of Counsel)
for the Commission

Cole, Sorrentino, Cavanaugh, Stephenson &
O'Brien (By Stephen E. Cavanaugh) for
Respondent

The respondent, Francis B. Pritchard, is a part-time justice of the Town Court of Grand Island, Erie County, and an attorney permitted to practice law. He was served with a Formal Written Complaint dated February 20, 1981, alleging misconduct with respect to his actions in five traffic cases and his failure to disqualify himself from presiding over two cases in which his impartiality might reasonably

be questioned. Respondent filed an answer on April 3, 1981.

By order dated April 23, 1981, the Commission designated the Honorable Harold A. Felix referee to hear and report proposed findings of fact and conclusions of law. The hearing was held on June 30 and July 1, 1981, and the referee filed his report with the Commission on October 20, 1981.

By motion dated December 21, 1981, the administrator of the Commission moved to confirm the referee's report and for a determination that respondent be censured. Respondent opposed the motion. The Commission heard oral argument on the matter on April 22, 1982, thereafter considered the record of the proceeding and made the following findings of fact.

As to Charge I of the Formal Written Complaint:

1. On November 3, 1975, respondent reduced a charge of speeding to driving with an unsafe tire in People v. Guy San Lorenzo as a result of a letter he received from Lewiston Town Court Justice Sebastian Lombardi, seeking special consideration on behalf of the defendant.

As to Charge II of the Formal Written Complaint:

2. On March 3, 1976, respondent reduced a charge of passing a red light to driving with an unsafe tire in People v. William M. Walsh as a result of a letter he received from Lewiston Town Court Justice Sebastian Lombardi, seeking special consideration on behalf of the defendant.

As to Charge III of the Formal Written Complaint:

3. On July 21, 1976, respondent reduced a charge of speeding 93 mph in a 55 mph zone to speeding 75 mph in a 55 mph

zone in People v. Alfonso R. Pacitti as a result of a letter he received from Lewiston Town Court Justice Sebastian Lombardi, seeking special consideration on behalf of the defendant.

As to Charge V of the Formal Written Complaint:

4. On March 9, 1977, respondent reduced a charge of speeding to driving with an unsafe tire in People v. Armand J. Castellani as a result of a letter he received from Lewiston Town Court Justice Sebastian Lombardi, seeking special consideration on behalf of the defendant.

As to Charge VI of the Formal Written Complaint:

5. From 1973 to 1977, respondent represented three plaintiffs who brought actions against Michael Sendlbeck: Link Building Products v. Sendlbeck in 1973, Calvin Jenkins and Jeffrey Hawkins v. Sendlbeck in 1973 and Grand Island Penny Saver v. Sendlbeck in 1975. In the Penny Saver case, judgment in the amount of \$257.49 was entered against Mr. Sendlbeck on September 15, 1975, and remained unsatisfied until January 1977.

6. On September 3, 1976, Michael Sendlbeck was arraigned before respondent on charges of non-payment of wages in People v. Michael Sendlbeck. At the time of the defendant's arraignment, the judgment in the Penny Saver case was still outstanding.

7. Mr. Sendlbeck moved for respondent to recuse himself from presiding over People v. Sendlbeck. Respondent denied the motion. Mr. Sendlbeck thereafter entered a plea of guilty to the charge and was sentenced by respondent to 60 days in jail

and a \$500 fine. The County Court, Erie County, subsequently modified the term of imprisonment to time already served by the defendant.

8. A portion of the money received from Mr. Sendlbeck's bail checks was used by his attorney to satisfy the Penny Saver judgment and to pay respondent's fee for that case.

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), 33.3(a)(4), 33.3(b)(2) and 33.3(c)(1)(i) of the Rules Governing Judicial Conduct (now Sections 100.1, 100.2, 100.3[a][1], 100.3[a][4], 100.3[b][2] and 100.3[c][1][i]) and Canons 1, 2, 3A(1), 3A(4) and 3C(1)(a) of the Code of Judicial Conduct. Charges I, II, III, V and VI of the Formal Written Complaint are sustained and respondent's misconduct is established. Charges IV and VII of the Formal Written Complaint are not sustained and therefore are dismissed.

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 of another judge for favorable dispositions for the defendants in traffic cases, respondent violated the applicable rules enumerated above.

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, 47NY2d (b), (c) (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.

With respect to his conduct in the Sendlbeck case, respondent, by failing to disqualify himself, failed to separate his judicial duties from his private interests as a practicing attorney. Respondent should have recognized the appearance of impropriety that would result from his presiding over a matter in which the defendant owed money to a client of his. By refusing to recuse himself, respondent acted in a manner in which his impartiality and objectivity might reasonably be questioned.

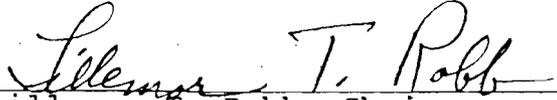
By reason of the foregoing, the Commission determines that respondent should be censured.

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: (June 10, 1982)


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