

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

ROBERT W. RADLOFF,

a Justice of the Lake George Town
Court, Warren County.

Determination

BEFORE: Mrs. Gene Robb, Chairwoman
Honorable Fritz W. Alexander, II
David Bromberg
Honorable Richard J. Cardamone
Dolores DelBello
Michael Kirsch
Victor A. Kovner
Honorable Isaac Rubin
Honorable Felice K. Shea
Carroll L. Wainwright, Jr.

Respondent, Robert W. Radloff, a justice of the Town Court of Lake George, Warren County, was served with a Formal Written Complaint dated October 3, 1979, setting forth 43 charges relating to the improper assertion of influence in traffic cases. Respondent filed an answer dated October 22, 1979.

By notice dated November 29, 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 43 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 did not submit a memorandum.

The Commission considered the record in this proceeding on February 27, 1980, and upon that record makes the following findings of fact.

1. Charge I: On July 30, 1975, respondent reduced a charge of speeding to driving with an unsafe tire in People v. Peter Bishko as a result of a communication he received from former Justice Frank Tate of the Town Court of Colonie, seeking special consideration on behalf of the defendant.

2. Charge II: On January 28, 1977, respondent reduced a charge of speeding to driving with an inadequate directional signal in People v. Jan Vanwingerden as a result of a communication he received from Judge Constantine Cholakis of the Rensselaer County Court, seeking special consideration on behalf of the defendant.

3. Charge III: On October 23, 1974, respondent reduced a charge of driving to the left of pavement markings to driving with an inadequate muffler in People v. Lawrence J. Freedella as a result of a written communication he received from Justice John Carusone of the Town Court of Queensbury, seeking special consideration on behalf of the defendant.

4. Charge IV: On February 27, 1975, respondent reduced a charge of speeding to failure to keep right in People v. Loyce O. McMillan as a result of a written communication he received from Justice C. Ross Daniels, Jr., of the Town Court of Pawling, seeking special consideration on behalf of the defendant.

5. Charge V: On September 15, 1975, respondent reduced a charge of speeding to passing a red light and granted an unconditional discharge in People v. Verna S. Bain as a result of a communication he received from Judge John G. Dier of the Warren County Court, seeking special consideration on behalf of the defendant.

6. Charge VI: On April 10, 1974, respondent reduced a charge of speeding to failure to keep right in People v. Raymond A. Rabideau as a result of a written communication he received from Justice Philip Drollette of the Town Court of Plattsburgh, seeking special consideration on behalf of the defendant.

7. Charge VII: On August 6, 1975, respondent reduced a charge of speeding to failure to keep right in People v. Robert V. St. Louis as a result of a written communication he received from Justice Philip Drollette of the Town Court of Plattsburgh, seeking special consideration on behalf of the defendant.

8. Charge VIII: On November 10, 1976, respondent reduced a charge of speeding to driving with an inadequate muffler in People v. Wayne M. Bressette as a result of a written communication he received from Justice Philip Drollette of the Town Court of Plattsburgh, seeking special consideration on behalf of the defendant.

9. Charge IX: On January 5, 1976, respondent reduced a charge of speeding to driving with an inadequate directional signal in People v. Marcel Breton as a result of a written communication he received from Justice Anthony G. Ellis of the Village Court of Tupper Lake, seeking special consideration on behalf of the defendant.

10. Charge X: On November 8, 1974, respondent reduced a

charge of speeding to driving with an inadequate directional signal in People v. Theode Desmaris as a result of a written communication he received from Justice Anthony G. Ellis of the Town Court of Altamont, seeking special consideration on behalf of the defendant.

11. Charge XI: On August 21, 1974, respondent reduced a charge of speeding to driving with an unsafe tire in People v. George E. LaClaire, Jr., as a result of a written communication he received from Justice M. Leo Friedman of the Town Court of Schroon, seeking special consideration on behalf of the defendant.

12. Charge XII: On October 4, 1973, respondent reduced a charge of speeding to driving with an inadequate muffler in People v. Robert L. Cervera as a result of a written communication he received from Justice Edward Longo of the Town Court of Rotterdam, seeking special consideration on behalf of the defendant.

13. Charge XIII: On December 4, 1974, respondent reduced a charge of speeding to failure to keep right in People v. Robert E. Ford, Sr., as a result of a written communication he received from Justice Clarence G. Hallenbeck of the Village Court of Hudson Falls, seeking special consideration on behalf of the defendant.

14. Charge XIV: On January 17, 1973, respondent reduced a charge of passing a stop sign to driving with an unsafe tire in People v. Frank P. Orsini as a result of a communication he received from Justice Clarence G. Hallenbeck of the Village Court of Hudson Falls, or someone at his request, seeking special consideration on behalf of the defendant.

15. Charge XV: On July 16, 1975, respondent reduced a charge of speeding to driving with an unsafe tire in People v. Charles A. DePasquale as a result of a written communication he received from

Justice Clarence G. Hallenbeck of the Village Court of Hudson Falls, seeking special consideration on behalf of the defendant.

16. Charge XVI: On January 24, 1975, respondent reduced a charge of speeding to driving with an unsafe tire in People v. Gerald R. Thomsen as a result of a written communication he received from Justice Clarence G. Hallenbeck of the Village Court of Hudson Falls, seeking special consideration on behalf of the defendant.

17. Charge XVII: On April 21, 1976, respondent reduced a charge of speeding to driving with an inadequate directional signal and granted an unconditional discharge in People v. Robert R. Catlin as a result of a written communication he received from Justice Duncan MacAffer of the Village Court of Menands, seeking special consideration on behalf of the defendant.

18. Charge XVIII: On July 17, 1975, respondent reduced a charge of speeding to failure to keep right in People v. Christopher Coward as a result of a written communication he received from Justice Duncan MacAffer of the Village Court of Menands, seeking special consideration on behalf of the defendant.

19. Charge XIX: On September 19, 1974, respondent reduced a charge of speeding to failure to keep right in People v. LeRoy F. Tyler as a result of a written communication he received from Justice Matthew Mataraso of the Town Court of Guilderland, seeking special consideration on behalf of the defendant.

20. Charge XX: On August 27, 1974, respondent imposed a conditional discharge in People v. Richard H. Gaines as a result of a written communication he received from Justice Stanley N. Moore of

the Town Court of Champlain, seeking special consideration on behalf of the defendant.

21. Charge XXI: On July 9, 1973, respondent reduced a charge of speeding to driving with an inadequate muffler in People v. William E. Santos as a result of a written communication he received from Justice Frank Santos of the Town Court of Florida, seeking special consideration on behalf of the defendant, Judge Santos' nephew.

22. Charge XXII: On May 5, 1976, respondent reduced a charge of speeding to unnecessary smoke in People v. Pincus P. Peller as a result of a written communication he received from Justice Morris Strauss of the Village Court of Scotia, seeking special consideration on behalf of the defendant.

23. Charge XXIII: On May 14, 1974, respondent reduced a charge of speeding to driving with an unsafe tire and granted an unconditional discharge in People v. Vernon G. Williams as a result of a written communication he received from Justice Vernon Williams of the Town Court of Palatine, seeking special consideration on behalf of the defendant, Judge Williams' son.

24. Charge XXIV: On March 31, 1977, respondent imposed an unconditional discharge in People v. Timothy T. Breeyear as a result of a written communication he received from Justice Paul Brown of the Village Court of Hudson Falls, seeking special consideration on behalf of the defendant.

25. Charge XXV: On March 10, 1977, respondent reduced a charge of speeding to driving with an inadequate muffler in People v. Donald Mortimer as a result of a communication he received from Carl DeSantis, Warren County Republican Committee Chairman, seeking

special consideration on behalf of the defendant.

26. Charge XXVI: On November 5, 1973, respondent reduced a charge of speeding to driving with an inadequate muffler in People v. George E. Linsky as a result of a written communication he received from Alan Linsky, Clerk of the Village Court of Atlantic Beach, seeking special consideration on behalf of the defendant, Alan Linsky's brother.

27. Charge XXVII: On February 5, 1974, respondent reduced a charge of speeding to driving with an unsafe tire in People v. Geraldine L. Wirth as a result of a communication he received seeking special consideration on behalf of the defendant.

28. Charge XXVIII: On October 3, 1973, respondent reduced a charge of speeding to driving with an inadequate muffler in People v. Edward M. Kirby as a result of a communication he received from Trooper P. J. Nadig seeking special consideration on behalf of the defendant.

29. Charge XXIX: On January 24, 1973, respondent reduced a charge of speeding to driving with an inadequate muffler in People v. Gesa Tatarko as a result of a communication he received from Joe Stafford, Chief of Police of the Town of Bolton, seeking special consideration on behalf of the defendant.

30. Charge XXX: On July 25, 1975, respondent reduced a charge of speeding to driving with an inadequate muffler in People v. Frank W. Dunham as a result of a communication he received from Robert Flacke, Lake George Town Supervisor, or someone at his request, seeking special consideration on behalf of the defendant.

31. Charge XXXI: On January 2, 1973, respondent reduced a charge of speeding to driving with an inadequate muffler in People v.

Salvatore Rinaldi as a result of a communication he received from Thomas Marzola, Jr., Glens Falls City Councilman, seeking special consideration on behalf of the defendant.

32. Charge XXXII: On March 3, 1976, respondent reduced a charge of speeding to driving with an inadequate muffler and granted an unconditional discharge in People v. Raymond P. Calcagne as a result of a communication he received from Justice James Ross of the Town Court of Bolton, seeking special consideration on behalf of the defendant.

33. Charge XXXIII: On May 15, 1974, respondent reduced a charge of speeding to driving with an unsafe tire and granted an unconditional discharge in People v. Leo Fertal as a result of a communication he received from Trooper Win Grange seeking special consideration on behalf of the defendant.

34. Charge XXXIV: On November 10, 1976, respondent reduced a charge of speeding to driving with an unsafe tire in People v. Richard Jablonski as a result of a communication he received from Trooper J. J. Cuddie seeking special consideration on behalf of the defendant.

35. Charge XXXV: On July 16, 1975, respondent reduced a charge of speeding to driving with an inadequate directional signal and granted an unconditional discharge in People v. Frank J. Moynihan as a result of a communication he received from Trooper Nadiig seeking special consideration on behalf of the defendant.

36. Charge XXXVI: On January 7, 1976, respondent reduced a charge of speeding to driving with an unsafe tire in People v. Arthur J. Ingersoll as a result of a communication he received from Trooper Mahar, or someone at his request, seeking special consideration on behalf of the defendant.

37. Charge XXXVII: On April 13, 1976, respondent reduced a charge of speeding to driving with an unsafe tire in People v. Michael J. Joyce as a result of a communication he received from Trooper G. J. Head, or someone at his request, seeking special consideration on behalf of the defendant.

38. Charge XXXVIII: On July 27, 1976, respondent reduced a charge of speed not reasonable and prudent to driving with an unsafe tire in People v. Mark F. Chrzanowski as a result of a communication he received from Trooper G. J. Head, or someone at his request, seeking special consideration on behalf of the defendant.

39. Charge XXXIX: On November 5, 1973, respondent reduced a charge of speeding to driving with an unsafe tire and granted an unconditional discharge in People v. Bernard A. Smith as a result of a written communication he received from Trooper Norm Kilfoyle seeking special consideration on behalf of the defendant.

40. Charge XL: On September 12, 1974, respondent reduced a charge of speeding to driving with an inadequate directional signal in People v. George A. Mason as a result of a communication he received from Trooper Robert Werthmuller, or someone at his request, seeking special consideration on behalf of the defendant.

41. Charge XLI: On September 3, 1974, respondent reduced a charge of speeding to driving with an inadequate muffler in People v. Ludwig J. Huttig as a result of a written communication he received from Trooper C. J. Phillips seeking special consideration on behalf of the defendant.

42. Charge XLII: On February 18, 1976, respondent reduced a

charge of speeding to unnecessary smoke in People v. Gary R. Johnston as a result of a communication he received from Trooper Jim Tedesco, or someone at Trooper Tedesco's request, seeking special consideration on behalf of the defendant.

43. Charge XLIII: On May 21, 1975, respondent reduced a charge of speeding to driving with an unsafe tire in People v. Samuel Snyder, as a result of a communication he received from Trooper Ted Rehm, or someone at his 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, 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 XLIII 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.

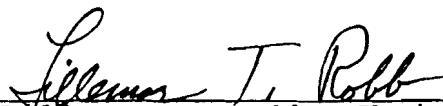
In Matter of Byrne, 420 NYS2d 70 (Ct. on the Judiciary 1979), the court declared that a "judicial officer who accords or requests special treatment or favoritism to a defendant in his court or another judge's court is guilty of malum in se misconduct constituting cause for discipline." In that case, 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. Mr. Kirsch concurs in accord with his concurring opinion in Matter of Haberneck, NYLJ Aug. 10, 1979, p. 12, col. 5, (Com. on Jud. Conduct, July 10, 1979).

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 (Jeanne A. O'Connor, Of Counsel) for the Commission

Robert W. Radloff, Respondent *Pro Se*