

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 :

HORACE C. SAWYER, :  
a Justice of the Goshen Village Court, :  
and the Goshen Town Court, :  
Orange County. :

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PRESENT: Mrs. Gene Robb, Chairwoman  
Honorable Fritz W. Alexander, II  
David Bromberg  
Dolores DelBello  
Michael M. Kirsch  
Victor A. Kovner  
William V. Maggipinto  
Honorable Isaac Rubin  
Honorable Felice K. Shea  
Carroll L. Wainwright, Jr.

The respondent, Horace C. Sawyer, a justice of the Town and Village Courts of Goshen, Orange County, was served with a Formal Written Complaint dated October 10, 1978, setting forth 11 charges of misconduct relating to the improper assertion of influence in traffic cases. In his answer, filed on February 5, 1979, respondent (i) admitted the factual allegations set forth in the Formal Written Complaint by his failure to deny same, pursuant to Section 7000.6(b) of the Commission's Rules (22 NYCRR 7000.6[b]) and (ii) denied violating the ethical standards cited in the Formal Written Complaint.

The administrator of the Commission moved for summary determination on March 29, 1979, pursuant to Section 7000.6(c) of the Commission's Rules (22 NYCRR 7000.6[c]). The Commission granted the motion on April 17, 1979, finding respondent guilty of judicial misconduct with respect to all 11 charges, and setting a date for oral argument on the issue of an appropriate sanction. The administrator submitted a memorandum prior to oral argument.

The Commission heard oral argument on sanction on May 22, 1979, thereafter considered the record in this proceeding, and upon that record finds the following facts:

1. On June 18, 1974, respondent sent a letter to Justice Charles J. Shaughnessy of the Chester Town Court, seeking special consideration on behalf of the defendant in People v. Robert B. Walker, a case then pending before Judge Shaughnessy.

2. On June 7, 1975, respondent communicated with Justice John O'Connor of the Wawayanda Town Court, seeking special consideration on behalf of the niece of respondent's wife, the defendant in People v. Rae Ann Fleming, a case then pending before Judge O'Connor.

3. On April 13, 1976, respondent sent a letter to Justice Thomas J. Byrne of the Newburgh Town Court, seeking special consideration on behalf of the defendant in People v. Douglas R. Crana, a case then pending before Judge Byrne.

4. On a date unknown, respondent sent a letter to Justice Thomas J. Byrne of the Newburgh Town Court, seeking

special consideration on behalf of a defendant in a case pending before Judge Byrne.

5. On September 5, 1974, respondent reduced a charge of speeding to driving with unsafe tires in People v. Robert E. Neilly as a result of a communication he received from Justice John O'Connor of the Wawayanda Town Court, seeking special consideration on behalf of the defendant.

6. On September 25, 1974, respondent imposed an unconditional discharge in People v. Moses L. Smith as a result of an oral communication that he received from Justice Joseph W. Dally of the Monroe Town Court, seeking special consideration on behalf of the defendant.

7. On July 28, 1975, respondent reduced a charge of speeding to driving with an unsafe tire in People v. Philip A. Bellino, Jr., as a result of a communication he received from Justice Edmund V. Caplicki of the LaGrange Town Court, seeking special consideration on behalf of the defendant.

8. On February 15, 1976, respondent reduced a charge of speeding to driving with an unsafe tire in People v. Thomas Muscarella as a result of a communication he received from Justice Edward A. Lahey of the New Windsor Town Court, seeking special consideration on behalf of the defendant.

9. On June 23, 1976, respondent reduced a charge of speeding to failure to keep right in People v. Carol Diamond as a result of a communication he received from Justice Robert J.

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

10. On February 9, 1977, respondent reduced a charge of speeding to driving with an unsafe tire in People v. Joseph Torrisi as a result of a communication he received from Justice George L. Mapes of the Chester Town Court, seeking special consideration on behalf of the defendant.

11. On February 14, 1977, respondent reduced a charge of speeding to driving with an unsafe tire in People v. Robert A. Cromie as a result of a communication he received from Justice Lyle McDowell of the Mount Hope Town Court, seeking special consideration on behalf of the defendant.

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 XI 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 other judges, 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

APPEARANCES:

Robert T. Hartmann for Respondent

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