

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

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

 HAROLD H. SCHULTZ, :

a Justice of the New Scotland Town :
Court, Albany County. :

COMMISSION
DETERMINATION

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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, Harold A. Schultz, a justice of the Town Court of New Scotland, Albany County, was served with a Formal Written Complaint dated December 1, 1978, setting forth one charge of misconduct relating to the improper assertion of influence in a traffic case over which he presided and in which the defendant was his son. In his answer, filed with the Commission on December 26, 1978, respondent admitted the factual allegations set forth in the Formal Written Complaint but denied having granted special consideration to the defendant.

On January 30, 1979, the Commission appointed the Honorable Simon J. Liebowitz as referee to hear and report to

the Commission with respect to this matter. A hearing was conducted on March 5, 1979, and the report of the referee was filed with the Commission on March 12, 1979.

The administrator of the Commission moved on March 13, 1979, to confirm the findings of the referee. Respondent submitted a letter in response to the administrator's motion.

The Commission considered the record in this matter on April 17, 1979, and upon that record concludes as follows:

1. On or about August 3, 1978, in connection with People v. Glenn T. Schultz, a case then pending in the Town Court of New Scotland, respondent:

a. failed to disqualify himself from the case, notwithstanding that the defendant was his son, in violation of Section 14 of the Judiciary Law;

b. granted special consideration to the defendant by interviewing the arresting officer and reducing the charge of speeding to unsafe tire a week before the return date;

c. failed as of October 26, 1978, to make any record of the case in the town court docket; and

d. failed as of October 26, 1978, to report the disposition of the case to the State Comptroller, as required by law.

2. Respondent's failure (i) to make a proper record of the case and (ii) to report the disposition as required by law

was based on his intention to avoid discovery of his action, and as such constitutes an inexcusable irregularity in the proper performance of his administrative responsibilities.

3. By reason of the foregoing, respondent violated Sections 33.1, 33.2, 33.3(a)(1), 33.3(b)(1) and 33.3(c)(1)(iv)(a) of the Rules Governing Judicial Conduct and Canons 1, 2A, 3B(1) and 3C(1)(d)(i) of the Code of Judicial Conduct.

It is improper for a judge to render a decision in a any judicial proceeding on the basis of a personal, and in this case a familial, relationship with the defendant. Both the Judiciary Law and the Rules Governing Judicial Conduct prohibit a judge from presiding over a case if he is related within the sixth degree of consanguinity to one of the parties. (Jud.L.§14; Rules §33.3[c] [1][iv][a].) By presiding over a case in which his son was the defendant, respondent clearly violated both the law and the applicable ethical standards.

Having found that respondent violated the statutory, administrative and ethical obligations upon him and is thereby guilty of judicial misconduct, the Commission now considers the appropriate sanction.

Respondent's misconduct, standing alone, is serious. In Matter of Byrne, N.Y.L.J., April 20, 1979, vol. 179, p. 5, 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." The court said such conduct was "wrong and has always been wrong." Id.

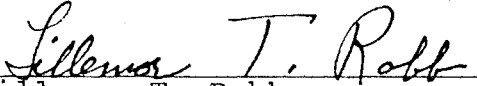
Respondent's misconduct in this matter is exacerbated by the fact that he had been censured previously for similar misconduct. On March 31, 1978, only four months before his misconduct in People v. Glenn T. Schultz, respondent was publicly censured by the former State Commission on Judicial Conduct for asserting or acceding to special influence in a total of 19 separate traffic cases.

Despite the censure in March 1978, respondent repeated the improper practice of ticket-fixing in the Schultz case in August 1978, compounding the impropriety with a violation of the Judiciary Law by presiding over a matter involving his son. Such conduct is inexcusable.

The Commission hereby determines that the appropriate sanction is removal from office. This determination is made pursuant to Section 47 of the Judiciary Law, since respondent resigned as town justice effective March 1, 1979.

This determination constitutes the findings of fact and conclusions of law required by Section 44, subdivision 7, of the Judiciary Law.

All concur.


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

Dated: May 29, 1979
Albany, New York

APPEARANCES:

Harold Schultz, Respondent Pro Se

Gerald Stern for the Commission (Stephen F. Downs, John K. Sharkey, Of Counsel)