

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

JOSEPH SCHWERTFEGER,

a Justice of the Floyd Town Court,
Oneida 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 Floyd, Oneida County, was served with a Formal Written Complaint dated May 31, 1979, setting forth four charges of misconduct relating to the improper assertion of influence in traffic cases. Respondent filed an answer dated July 6, 1979.

By notice of motion dated August 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. The Commission granted the motion on September 26, 1979, deemed respondent's misconduct established with respect to all four 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 on sanction.

The Commission considered the record in this proceeding on October 26, 1979, and upon that record makes the following findings of fact.

1. As to Charge I, on October 5, 1975, respondent sent a letter to the Cheektowaga Town Court, seeking special consideration on behalf of the defendant in People v. James J. Piluso, a case then pending in the Cheektowaga Town Court.

2. As to Charge II, on October 12, 1976, respondent sent a letter to Justice Vincent Scholl of the Town Court of Kirkland, seeking special consideration on behalf of the defendant in People v. Edwin C. Evans, a case then pending before Judge Scholl.

3. As to Charge III, on February 24, 1975, respondent reduced a charge of speeding to failure to keep right in People v. Steven W. Citrin 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.

4. As to Charge IV, on September 13, 1976, respondent reduced a charge of speeding to driving with an inadequate muffler in People v. John Malorzo as a result of a written communication he received, seeking special consideration on behalf of the defendant.

Upon the foregoing facts, 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 IV 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.

Courts in this state and other jurisdictions have found that favoritism is serious judicial misconduct and that ticket-fixing is a form of favoritism.

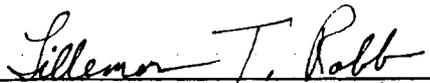
By reason of the foregoing, the Commission determines that the appropriate sanction is admonition.

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: December 19, 1979
Albany, New York

APPEARANCES:

Capecelatro, DelBouno, Vaughn (By Salvatore J. Capecelatro, Jr.)
for Respondent

Gerald Stern for the Commission (Stephen F. Downs, Edith Holleman,
Of Counsel)