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

THOMAS R. SNOW,

a Justice of the Town Court of Schodack, Renssealer County.

BEFORE: Mrs. Gene Robb, Chairwoman
Honorable Fritz W. Alexander
David Bromberg, Esq.
Dolores DelBello
Michael M. Kirsch, Esq.
Victor A. Kovner, Esq.
William V. Maggipinto, Esq.
Honorable Isaac Rubin

APPEARANCES:

Gerald Stern (Jack J. Pivar, Of Counsel) for the Commission.
George H. Dush for the Respondent.

Respondent, Thomas R. Snow, a justice of the Town Court of Schodack, Renssealer County, was served with a Formal Written Complaint dated July 5, 1979, setting forth three charges of improper influence in traffic cases. Respondent filed an answer dated September 7, 1979.

By order dated October 12, 1979, the Commission designated Bruno Colapietro, Esq., referee to hear and report with respect to the issues herein. The hearing was held on November 16, 1979, December 14, 1979, and December 27, 1979, and the report of the referee was filed on March 5, 1980.

At the hearing, respondent moved for dismissal of Charge II of the Formal Written Complaint. The referee did not pass on the motion, pursuant to Section 7000.6(f) of the Commission's rules (22 NYCRR 7000.6[f]), reserving jurisdiction for the Commission to consider motions to dismiss. Upon due consideration, the Commission hereby denies the motion.

By notice of motion dated April 8, 1980, the administrator of the Commission moved to confirm the referee's report and for a determination of misconduct and sanction. Respondent did not submit opposing papers.

The Commission heard oral argument on the administrator's motion on May 22, 1980. Thereafter, in executive session, the Commission considered the record of this proceeding, and upon that record makes the following findings of fact.

Preliminarily, we note that respondent is a practicing attorney and serves part-time as a town court justice.

1. Charge I: On November 17, 1976, respondent caused a letter on judicial stationery to be sent in his name to Justice Philip Caponera of the Town Court of Colonie, requesting special consideration on behalf of the defendant in People v. Richard Hunsdorfer, a case then pending before Justice Caponera. The letter was prepared and signed by respondent's secretary, with respondent's knowledge and permission. The defendant was a client of respondent's at the time.

2. Charge II: On October 15, 1973, respondent sent a letter on judicial stationery to Justice George Briegle of the Town Court of Sand Lake, requesting special consideration on behalf of the defendant in People v. John Lesovich, a case then pending before Justice Briegle.

3. Charge III: On April 11, 1977, respondent sent a letter on judicial stationery to a judge of the City Court of Syracuse, requesting special consideration on behalf of the defendant in People v. Russell Cummings, a case then pending in the Syracuse City Court.

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 III 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. By making ex parte requests of other judges for favorable dispositions for defendants in traffic cases, respondent engaged in favoritism and 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 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.

Respondent's misconduct is exacerbated by the fact that, as both a judge and a practicing lawyer, he should be especially sensitive to the applicable rules and canons.

In oral argument before the Commission, respondent suggested a similarity between the instant case and Dixon v. State Commission on Judicial Conduct, 47 NY2d 523 (1979), in which

the Court of Appeals upheld a finding of judicial misconduct but modified to admonition a Commission determination that a town court justice be censured. In Dixon, the Commission had found that the respondent, a lay justice, had sought special consideration from other judges on behalf of the defendants in two traffic cases.

We find the instant proceeding analogous to Dier v. State Commission on Judicial Conduct, 48 NY2d 874 (1979), in which the Court of Appeals upheld both the Commission's finding of judicial misconduct and its determination that the respondent be censured. In Dier, the Commission had found that the respondent, a lawyer judge, had sought special consideration from other judges on behalf of the defendants in two traffic cases.

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

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 26, 1980
Albany, New York

Lillemor T. Robb

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