

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

JAMES L. TIPPETT,

Determination

a Justice of the Town Court of
Tonawanda, Erie County.

BEFORE: Mrs. Gene Robb, Chairwoman
Honorable Fritz W. Alexander, II
David Bromberg, Esq.
E. Garrett Cleary, Esq.
Dolores DelBello
Michael M. Kirsch, Esq.
Victor A. Kovner, Esq.
Honorable Isaac Rubin
Honorable Felice K. Shea
Carroll L. Wainwright, Jr., Esq.

APPEARANCES:

Gerald Stern (Barry M. Vucker, Of Counsel)
for the Commission

Doyle & Phelan (By George P. Doyle)
for Respondent

The respondent, James L. Tippett, a justice of the Town Court of Tonawanda, Erie County, was served with a Formal Written Complaint dated April 15, 1980, alleging misconduct with respect to seven traffic cases. Respondent filed an answer dated May 28, 1980.

By order dated July 7, 1980, the Commission designated Solon J. Stone, Esq., referee to hear and report proposed findings of fact and conclusions of law. The hearing was held on December

15, and 16, 1980, and the referee filed his report to the Commission on April 22, 1981.

By motion dated June 19, 1981, the administrator of the Commission moved to confirm in part and to disaffirm in part the referee's report, and for a determination that respondent be censured. Respondent did not submit papers in opposition but appeared by counsel for oral argument on October 23, 1981. Thereafter the Commission considered the record of this proceeding and now makes the following findings of fact:

1. Charge I: On June 7, 1976, respondent reduced a charge of speeding to failure to obey a traffic control device in People v. W. F. Blackwell, Jr., as a result of a letter he received from Lewiston Town Court Justice Sebastian Lombardi and Lewiston Town Court Clerk Gloria A. Donovan, seeking special consideration on behalf of the defendant.

2. Charge II: On August 16, 1976, respondent reduced a charge of speeding to failure to obey a traffic sign in People v. Dario Capozzi as a result of a communication he received from the defendant's brother-in-law, a State Trooper, seeking special consideration for the defendant.

3. Charge III: On January 6, 1975, respondent reduced a charge of speeding to failure to obey a traffic sign in People v. Franklin Gaglione as a result of a communication he received from Lewiston Town Court Justice Sebastian Lombardi, seeking special consideration on behalf of the defendant.

4. Charge IV: On August 19, 1976, respondent accepted

the forfeiture of bail in lieu of further prosecution of a charge of speeding in People v. Francis Valente as a result of a letter he received from Lewiston Town Court Justice Sebastian Lombardi, seeking special consideration on behalf of the defendant.

5. Charge VI: On June 8, 1972, respondent accepted the forfeiture of bail in lieu of further prosecution of a speeding charge in People v. Frances M. Klein as a result of a letter he received from Lewiston Town Court Justice Sebastian Lombardi, confirming a prior conversation with the Tonawanda Town Court clerk and seeking special consideration on behalf of the defendant.

6. Charge VII: On May 10, 1976, respondent reduced a charge of speeding to failure to obey a traffic device in People v. Roy Di Pasquale as a result of a letter he received from Lancaster Town Court Justice J. Michael Kelleher, 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), 33.3(a)(4), 33.3(b)(1) and 33.3(b)(2) of the Rules Governing Judicial Conduct and Canons 1, 2, 3A(1), 3A(4), 3B(1) and 3B(2) of the Code of Judicial Conduct. Charges I through IV and Charges VI and VII of the Formal Written Complaint are sustained and respondent's misconduct is established. Charge V of the Formal Written Complaint is not sustained and therefore is dismissed.

It is improper for a judge to seek to persuade another judge, on the basis of personal or other special influence, to grant

special consideration to a defendant. It is also improper for a judge to accede to such requests from judges and others with influence. By granting the requests of other judges for favorable dispositions for defendants in traffic cases, respondent violated the Rules enumerated above.

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.

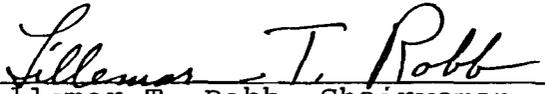
By reason of the foregoing, the Commission determines that the appropriate sanction is admonition.

All concur, except (i) with respect to Charges IV and VI, Mr. Cleary, Mr. Kirsch, Mrs. Robb and Judge Shea dissent and vote to dismiss the charges, (ii) with respect to Charge V, Mrs. DelBello dissents and votes to sustain the charge and (iii) with respect to sanction, Mrs. Robb dissents and votes that respondent be censured.

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: December 3, 1981


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