

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

ANDRE BERGERON,

Determination

a Justice of the Lewis Town Court,
Essex County.

BEFORE: Mrs. Gene Robb, Chairwoman
Honorable Fritz W. Alexander, II
David Bromberg
Honorable Richard J. Cardamone
Dolores DelBello
Michael M. Kirsch
William V. Maggipinto
Honorable Isaac Rubin
Honorable Felice K. Shea

The respondent, Andre Bergeron, a justice of the Town Court of Lewis, Essex County, was served with a Formal Written Complaint dated January 29, 1979, setting forth 16 charges of misconduct relating to the improper assertion of influence in traffic cases. Respondent filed an answer dated February 22, 1979.

By notice of motion dated May 23, 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 June 21, 1979, deemed respondent's misconduct established with respect to all 16 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 submitted a letter on sanction.

The Commission considered the record in this proceeding on September 27, 1979, and upon that record finds the following facts.

1. As to Charge I, on March 2, 1977, respondent sent a letter to Judge John Holt-Harris of the Albany Traffic Court, seeking special consideration on behalf of the defendant in People v. Gilles Dumont, a case then pending before Judge Holt-Harris.

2. As to Charge II, on October 6, 1974, respondent reduced a charge of speeding to driving with unsafe tires in People v. Sandra T. Dressel as a result of a written communication he received from Justice Floyd Lashway of the Town Court of Ellenburg, seeking special consideration on behalf of the defendant, Judge Lashway's daughter.

3. As to Charge III, on October 20, 1975, respondent reduced a charge of speeding to driving with unsafe tires in People v. Mary O. Lord as a result of a written communication he received from Justice Philip H. Drollette of the Town Court of Plattsburgh, seeking special consideration on behalf of the defendant.

4. As to Charge IV, on April 6, 1976, respondent reduced a charge of speeding to driving with unsafe tires in People v. Edmour K. Steady as a result of a written communication he received from Justice Philip H. Drollette of the Town Court of Plattsburgh, seeking special consideration on behalf of the defendant.

5. As to Charge V, on February 4, 1975, respondent reduced a charge of speeding to driving with unsafe tires in People v. Nathan M. Turk as a result of a written communication he received from Justice Frank E. Berean of the Town Court of Plattekill, seeking special consideration on behalf of the defendant.

6. As to Charge VI, on December 6, 1975, respondent reduced a charge of speeding to driving with unsafe tires in People v. Rita A. Wilson as a result of a written communication he received from Justice Donald Miner of the Town Court of Saranac, seeking special consideration on behalf of the defendant.

7. As to Charge VII, on September 15, 1976, respondent reduced a charge of speeding to driving with unsafe tires in People v. Douglas Chidester as a result of a written communication he received from Ted Chidester, Town of Greenport Chief of Police, seeking special consideration on behalf of the defendant.

8. As to Charge VIII, on December 26, 1974, respondent reduced a charge of speeding to driving with unsafe tires in People v. Anthony D. Gisondi as a result of a written communication he received from Justice Fred H. Schrader of the Town Court of Canajoharie, seeking special consideration on behalf of the defendant.

9. As to Charge IX, on March 4, 1975, respondent reduced a charge of speeding to driving with unsafe tires in People v. Terry B. Elia as a result of a written communication he received from Justice Lewis C. Di Stasi of the Town Court of Lloyd,

seeking special consideration on behalf of the defendant.

10. As to Charge X, on September 30, 1974, respondent reduced a charge of speeding to driving with unsafe tires in People v. Francis R. Dambrosy as a result of a written communication he received from Justice Robert E. Murphy of the Village Court of Voorheesville, seeking special consideration on behalf of the defendant.

11. As to Charge XI, on December 22, 1974, respondent reduced a charge of speeding to driving with unsafe tires in People v. Joseph F. Martin as a result of a written communication he received from Justice Fred Sears of the Town Court of Beekmantown, seeking special consideration on behalf of the defendant.

12. As to Charge XII, on May 10, 1977, respondent reduced a charge of speeding to failure to keep right in People v. Robert F. Flacke as a result of a written communication he received from Ralph E. Brown, Court Clerk of the Lake George Town Court, seeking special consideration on behalf of the defendant.

13. As to Charge XIII, on March 16, 1977, respondent reduced a charge of speeding to driving with unsafe tires in People v. E.J. LaFountain, Jr. as a result of a written communication he received from Justice Davison Pratt of the Town Court of Mooers, seeking special consideration on behalf of the defendant.

14. As to Charge XIV, on December 15, 1975, respondent reduced a charge of speeding to driving with unsafe tires in People v. Everett J. Ammerman as a result of a written communication he received from Justice Ronald V. Bailey of the Town Court of

Chesterfield, seeking special consideration on behalf of the defendant.

15. As to Charge XV, on November 28, 1974, respondent reduced a charge of speeding to driving with unsafe tires in People v. Anthony A. Renna as a result of a communication he received from Trooper Bill Courlis, seeking special consideration on behalf of the defendant.

16. As to Charge XVI, on March 21, 1976, respondent reduced a charge of speeding to driving with unsafe tires in People v. Herbert E. Rhoades as a result of a communication he received from Justice Joseph B. Johnson of the Town Court of North Hudson, 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) 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 XVI of the Formal Written Complaint are sustained, and respondent's misconduct is thereby 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 an ex parte request of another judge for a favorable disposition for the defendant in a traffic case, and by granting such requests from judges and others with influence,

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. Apr. 20, 1978, p. 5 (Ct. on the Judiciary, Apr. 18, 1978), 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.

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

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 12, 1979
Albany, New York

APPEARANCES:

John T. Manning for Respondent

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