

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

ALLAN T. BROWN,

a Justice of the Halfmoon Town Court,
Saratoga County.

Determination

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

Respondent, Allan T. Brown, a justice of the Town Court of Halfmoon, Saratoga County, was served with a Formal Written Complaint dated January 30, 1979, setting forth ten charges of misconduct relating to the improper assertion of influence in traffic cases. Respondent filed an answer dated March 8, 1970.

By notice of motion dated July 31, 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 August 16, 1979, deemed respondent's misconduct established with respect to all ten charges in the Formal Written Complaint, and set a date for oral argument on the issue of an appropriate sanction. The administrator submitted a memo-

randum 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 September 27, 1979, and upon that record finds the following facts.

1. As to Charge I, on March 6, 1975, respondent sent a letter to Justice James A. Davidson of the Town Court of Queensbury, seeking special consideration on behalf of the defendant in People v. Ada Henderson, a case then pending before Judge Davidson.

2. As to Charge II, on March 2, 1976, respondent sent a note to Justice Richard Lips of the Town Court of Clifton Park, seeking special consideration on behalf of the defendant in People v. Johannes Bierma, a case then pending before Judge Lips.

3. As to Charge III, on October 14, 1975, respondent sent a letter to Justice George E. Carl of the Town Court of Catskill, seeking special consideration on behalf of the defendant in People v. Sylvester Yates, a case then pending before Judge Carl.

4. As to Charge IV, on September 27, 1976, respondent sent a letter to Justice John S. Carusone of the Town Court of Queensbury, seeking special consideration on behalf of the defendant in People v. Bruce A. McVey, a case then pending before Judge Carusone.

5. As to Charge V, on September 16, 1976, respondent sent a letter to Justice Walter E. Burke of the Cohoes Police Court, seeking special consideration on behalf of the defendant in People v. Ronald Mowry, a case then pending before Judge Burke.

6. As to Charge VI, on August 28, 1974, respondent sent a letter to Justice John Carusone of the Town Court of Queensbury, seeking special consideration on behalf of the defendant in People v. Donald A. Goodrich, a case then pending before Judge Carusone.

7. As to Charge VII, on February 10, 1976, respondent sent a letter to Justice Raymond Galarneau of the Town Court of Waterford, seeking special consideration on behalf of the defendant in People v. Nina DeRossi, a case then pending before Judge Galarneau.

8. As to Charge VIII, on March 24, 1976, respondent, or someone at his request, communicated with Justice Richard Lips of the Town Court of Clifton Park, seeking special consideration on behalf of the defendant in People v. Virginia M. Fuehrer, a case then pending before Judge Lips.

9. As to Charge IX, on May 13, 1975, respondent, or someone at his request, communicated with Justice Richard Lips of the Town Court of Clifton Park, seeking special consideration on behalf of the defendant in People v. Frank E. Flanigan, a case then pending before Judge Lips.

10. As to Charge X, on November 1, 1975, respondent, or someone at his request, communicated with Justice James Brookman

of the Town Court of Glen, seeking special consideration on behalf of the defendant in People v. Joseph Harrington, a case then pending before Judge Brookman.

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 X 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 ex parte requests of other judges for favorable dispositions for the defendants in traffic cases, 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.

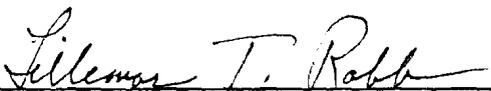
In Matter of Byrne, N.Y.L.J. Apr. 20, 1978, p. 5 (Ct. on the Judiciary, Apr. 18, 1978), the court declared that a "judicial officer who accords or requests special treatment or favoritism to a defendant in his court or another judge's court is guilty of malum in se misconduct constituting cause for discipline." 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, sub-

division 7, of the Judiciary Law.


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

Dated: December 12, 1979
Albany, New York

APPEARANCES:

David L. Riebel for Respondent

Gerald Stern for the Commission (Judith Siegel-Baum, Of Counsel)