

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

----- X
In the Matter :
- of - :
WILLIAM J. BULGER, :
a Justice of the Town Court :
of Wappinger, Dutchess County. :
----- X

DETERMINATION

STATE COMMISSION ON
JUDICIAL CONDUCT

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PRELIMINARY STATEMENT

This Determination of the State Commission on Judicial Conduct (hereinafter the "Commission") is submitted in accordance with Article VI, Section 22, of the Constitution of the State of New York, and Article 2-A of the Judiciary Law as amended effective April 1, 1978, (hereinafter "amended Judiciary Law"), for transmittal by the Chief Judge of the Court of Appeals to the Honorable William J. Bulger (hereinafter "respondent").

Respondent is a justice of the Town Court of Wappinger in Dutchess County. He is not an attorney. He first took office on February 21, 1963. His current term of office expires in December 1979.

The investigation in this matter was commenced on June 29, 1977, by the former State Commission on Judicial Conduct (hereinafter "former Commission"), pursuant to Section 43, subdivision 2, of the Judiciary Law then in effect (hereinafter "former Judiciary Law"). In the course of its investigation, the former Commission discovered one instance in which respondent made an ex parte request of another judge for a favorable disposition

for a defendant in a traffic case and thirteen instances in which respondent granted favorable dispositions to defendants in traffic cases pursuant to requests from third parties.

Pursuant to Section 43, subdivision 5, of the former Judiciary Law, the former Commission determined that cause existed to conduct a hearing. On November 28, 1977, respondent was served with a Notice of Hearing and a Formal Written Complaint, copies of which are hereto attached. In his Answer dated December 14, 1977, a copy of which is hereto attached, supplemented by an affidavit dated January 24, 1978, a copy of which is hereto attached, respondent admitted all but one of the factual allegations against him and did not address the remaining allegation. In his affidavit, respondent waived his right to the scheduled hearing.

Pursuant to Section 43, subdivision 7, of the former Judiciary Law, on March 13, 1978, the former Commission forwarded its Determination of public censure to the Chief Judge of the Court of Appeals, for transmittal by him to respondent. In a letter to the Commission dated March 16, 1978, the Chief Judge stated that it would be improper to transmit the Determination to the respondent, inasmuch as the pertinent provisions of the former Judiciary Law would be in effect only through March 31, 1978.* Consequently, the Determination was not transmitted to respondent.

*The former Judiciary Law provided that a respondent seeking review of a Determination filed by the former Commission could request the convening of a Court on the Judiciary for this purpose within 30 days of receipt of the Determination. The amended Judiciary Law provides that no new Court on the Judiciary could be convened on or after April 1, 1978. Thus, respondent's 30-day privilege to request convening of a Court on the Judiciary would have extended beyond April 1, 1978, the date after which no new Court could have been convened.

Section 48 of the amended Judiciary Law provides for the transfer to the Commission and continuance of all matters left pending by the former Commission and for which Courts on the Judiciary had not been convened, as of April 1, 1978.

This Determination, with findings of fact and conclusions of law as set forth below, is filed by the Commission in accordance with the provisions in Section 44, subdivision 7, of the amended Judiciary Law, for transmittal by the Chief Judge of the Court of Appeals to respondent.

FINDINGS OF FACT

On May 13, 1976, respondent sent a note on court stationery to Judge Vincent S. Francese, co-justice of the Town Court of Wappinger, requesting favorable treatment for the defendant, who was charged with driving with studded tires, in People v. Lillian T. Koretsky, a case then pending before Judge Francese.

On June 21, 1974, respondent imposed an unconditional discharge on a speeding charge in People v. Marylou P. Caccetta as a result of a letter he received on behalf of the defendant from Judge R. Douglas Hirst of the Village Court of Fishkill, or someone at Judge Hirst's request.

On July 12, 1974, respondent reduced a charge of speeding to illegal parking in People v. Barbara J. Eberhard as a result of a letter he received on behalf of the defendant from Judge Edward Filipowicz of the City Court of Poughkeepsie.

On April 15, 1975, respondent imposed an unconditional discharge on a speeding charge in People v. James E. Nolan as a result of a letter he received on behalf of the defendant from Judge A. John DeMiceli of the Town Court of Cornwall, or someone at Judge DeMiceli's request.

On May 23, 1975, respondent dismissed a charge of speeding in People v. Samuel O. Slee as a result of a letter he received on behalf of the defendant from Judge C. Allerton Morey of the Town Court of Washington.

On April 30, 1975, respondent reduced a charge of speeding to failure to keep right in People v. Frank DeMarco as a result of a letter he received on behalf of the defendant from Judge Edmund V. Caplicki of the Town Court of LaGrange.

On July 11, 1975, respondent imposed an unconditional discharge on a charge of driving to the left of the pavement marking in People v. Luis Urrelo as a result of a communication he received on behalf of the defendant from Judge Francois Cross of the Town Court of Fishkill.

On July 16, 1975, respondent imposed an unconditional discharge on a charge of driving to the left of the pavement marking in People v. Neil T. Gargiulo as a result of a communication he received on behalf of the defendant from Joyce Tomashosky, clerk of the Town Court of East Fishkill.

On February 10, 1976, respondent reduced a charge of passing a red light to driving with unsafe tires in People v. Elizabeth L. Bovee as a result of a communication he received on behalf of the defendant.

On March 10, 1976, respondent imposed an unconditional discharge on a speeding charge in People v. Robert T. Barber as a result of a communication he received on behalf of the defendant from Judge Larry Fogarty of the Town Court of East Fishkill, or someone at Judge Forgarty's request.

On March 10, 1976, respondent reduced a charge of speeding to illegal parking in People v. Anthony Barretto as a result of a communication he received on behalf of the defendant.

On August 20, 1976, respondent reduced a charge of speeding to failure to obey a traffic control device in People v. Kenneth C. Lindemann as a result of a letter he received on behalf of the defendant from "Elna", clerk of the Village Court of Wappingers Falls.

On August 31, 1976, respondent reduced a charge of speeding to illegal parking in People v. John G. Haverkamp as a result of a communication he received on behalf of the defendant.

On April 18, 1977, respondent reduced a charge of driving the wrong way on a one-way road to illegal parking in People v. David Yengo as a result of a communication he received on behalf of the defendant.

CONCLUSIONS OF LAW

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 for reasons that have nothing to do with the circumstances of the case. 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 a defendant in a traffic case and by granting favorable dispositions to defendants in traffic cases at the request of third parties, respondent was in violation of Section 33.1, 33.2, 33.3(a)(1) and 33.3(a)(4) of the Rules

Governing Judicial Conduct of the Administrative Board of the Judicial Conference, and Canons 1, 2 and 3(A) of the Code of Judicial Conduct, 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)]

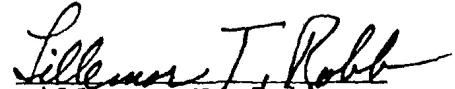
Courts in this state and other jurisdictions have found that favoritism is serious judicial misconduct and that ticket-fixing (similar if not identical to that activity of respondent) is a form of favoritism.

In Matter of Byrne, N.Y.L.J. April 20, 1978, vol. 179, p.5 (Ct. on the Judiciary), the Court on the Judiciary 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.

DETERMINATION

By reason of the foregoing, in accordance with Article VI, Section 22, of the Constitution of the State of New York, and Section 44, subdivision 7, of the amended Judiciary Law, the State Commission on Judicial Conduct has determined that respondent should be publicly censured.


Lillemor T. Robb
Chairwoman

Dated: New York, New York
December 13, 1978

APPEARANCES:

Bernard Kessler for Respondent

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