

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

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In the Matter :
- of - :
LEWIS C. DiSTASI, :
a Justice of the Town Court :
of Lloyd, Ulster County. :
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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 Lewis C. DiStasi (hereinafter "respondent").

Respondent is a justice of the Town Court of Lloyd in Ulster County. He is not an attorney. He received his judicial certification in 1965. His current term of office expires on December 31, 1981.

The investigation in this matter was commenced on May 25, 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 six instances in which respondent made ex parte requests of other judges for favorable dispositions for defendants in traffic cases.

Pursuant to Section 43, subdivision 5, of the former Judiciary Law, the former Commission determined that cause existed to conduct a hearing. On November 25, 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 19, 1977, a copy of which is hereto attached, respondent admitted all the factual allegations in the Formal Written Complaint. In a letter from respondent's attorney dated December 28, 1978, a copy of which is hereto attached, respondent waived his right to a 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

* 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.

respondent.

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 June 4, 1974, respondent sent a letter, on stationery which identifies him as a judge, to Judge Joseph L. Thomson of the Town Court of Cornwall, requesting favorable treatment for the defendant who was charged with speeding in People v. Louis E. Nasti, a case then pending before Judge Thomson. In his letter respondent refers to a prior telephone conversation regarding the Nasti case and to an enclosed check for \$20.00 in payment of the fine.

On November 30, 1974, respondent sent a letter, on stationery which identifies him as a judge, to Judge Jerald Fiedelholtz of the Town Court of New Windsor, requesting favorable treatment for the defendant, who was charged with speeding, in People v. Jeffrey M. Bennett, a case then pending before Judge Fiedelholtz. Respondent referred in his letter to a prior

telephone conversation he had held with Judge Fiedelholtz regarding the Bennett case, and he enclosed a \$10.00 check from the defendant in payment of the fine to be levied by Judge Fiedelholtz on the defendant for the reduced charge of driving on unsafe tires.

On March 4, 1975, respondent sent a letter, on stationery which identifies him as a judge, to Judge Andre Bergeron of the Town Court of Lewis, on behalf of the defendant, who was charged with speeding, in People v. Terry B. Elia, a case then pending before Judge Bergeron.

On December 12, 1975, respondent sent a letter, on stationery which identifies him as a judge, to Judge George E. Carl of the Town Court of Catskill, on behalf of the defendant, who was charged with speeding, in People v. Doris Winslow, a case then pending before Judge Carl.

On May 23, 1976, respondent sent a letter, on stationery which identifies him as a judge, to Court Clerk Betty Green of the Town Court of Newburgh, on behalf of the defendant, who was charged with speeding, in People v. William T. Damico, a case then pending before Judge Thomas J. Byrne of the Town Court of Newburgh. Respondent referred in his letter to a prior telephone conversation he had held with Ms. Green regarding the Damico case.

On September 1, 1976, respondent sent a letter, on stationery which identifies him as a judge, to Judge Wayne Smith

of the Town Court of Plattekill, on behalf of the defendant, who was charged with speeding, in People v. Andrea M. Padula, a case then pending before Judge Smith.

On October 2, 1976, respondent sent a letter, on stationery which identifies him as a judge, to Judge George E. Carl of the Town Court of Catskill, requesting favorable treatment for the defendant, who was charged with speeding, in People v. Frank Rutigliano, a case then pending before Judge Carl. Respondent referred in his letter to an enclosed check for \$20.00 as payment toward the fine.

On December 16, 1976, respondent sent a letter, on stationery which identifies him as a judge, to Judge Thomas J. Byrne of the Town Court of Newburgh, on behalf of the defendant, who was charged with failure to comply with a sign, in People v. Leonard Belvedere. Respondent referred in his letter to a prior telephone conversation with Judge Byrne regarding the Belvedere case.

On February 2, 1977, respondent, or someone at his request, communicated with Judge Joseph L. Thomson of the Town Court of Cornwall, on behalf of the defendant, who was charged with speeding 80 miles per hour in a 55 mile-per-hour zone, in People v. Philip J. Seymour, a case then pending before Judge Thomson.

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 ex parte requests of other judges for favorable dispositions for defendants in traffic cases, respondent was in violation of Sections 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 3A 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)]

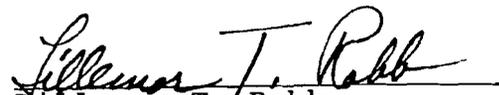
A judge shall...except as authorized by law, neither initiate nor consider ex parte or other communications concerning a pending or impending proceedings.... [Section 33.3(a)(4)]

Courts 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:

Peter R. Maroulis for Respondent

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