

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

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In the Matter of the Proceeding :
Pursuant to Section 44, subdivison 4, :
of the Judiciary Law in Relation to :
JOHN J. MODDER, :
a Justice of the Tuxedo Town Court, :
Orange County. :

COMMISSION
DETERMINATION

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PRESENT: Mrs. Gene Robb, Chairwoman
Honorable Fritz W. Alexander, II
David Bromberg
Dolores DelBello
Michael M. Kirsch
Victor A. Kovner
William V. Maggipinto
Honorable Isaac Rubin
Honorable Felice K. Shea
Carroll L. Wainwright, Jr.

The respondent, John J. Modder, a justice of the Town Court of Tuxedo, Orange County, was served with a Formal Written Complaint, dated October 10, 1978, setting forth eight charges of misconduct relating to the improper assertion of influence in traffic cases. In his answer, dated October 20, 1978, respondent admitted the material allegations set forth in the Formal Written Complaint.

The administrator of the Commission moved for summary determination on February 13, 1979, pursuant to Section 7000.6(c) of the Commission's Rules (22 NYCRR 7000.6[c]). The Commission granted the motion on February 27, 1979, dismissing Charge IV of

the Formal Written Complaint, finding respondent guilty of judicial misconduct with respect to the remaining seven charges and setting a date for oral argument on the issue of an appropriate sanction. The administrator and respondent submitted memoranda in lieu of oral argument.

1. On or about September 4, 1974, respondent sent a letter to Justice Richard Hering of the Liberty Town Court, seeking special consideration on behalf of the defendant in People v. John V. Modder, a case then pending before Judge Hering.

2. On or about April 14, 1975, respondent sent a letter to Justice Thomas Haberneck of the Newstead Town Court, seeking special consideration on behalf of the defendant in People v. Joseph Castlevetere, a case then pending before Judge Haberneck.

3. On or about May 28, 1975, respondent reduced a charge of passing a red light to driving with an inadequate muffler in People v. Diane Travaglione as a result of a written communication he received from Justice Robert Van Etten of the Woodbury Town Court, seeking special consideration on behalf of the defendant.

4. On or about June 2, 1975, respondent reduced a charge of passing a school bus to driving an unregistered motor vehicle in People v. John Filipowski as a result of a communication he received from Tuxedo Police Chief Sam Mottola, or someone at Chief Mottola's request, seeking special consideration on behalf of the defendant.

5. On or about June 23, 1976, respondent sent a letter to Justice James Mohn of the Pembroke Town Court, seeking special consideration on behalf of the defendant in People v. George Kam, a case then pending before Judge Mohn.

6. On or about April 1, 1976, respondent reduced a charge of speeding to driving an uninspected vehicle in People v. Ronald Hewlett as a result of a communication he received, seeking consideration on behalf of the defendant.

7. On or about September 10, 1973, respondent reduced a charge of speeding to driving with an unsafe tire in People v. Joseph Sugarman as a result of a written communication he received, seeking special consideration on behalf of the defendant.

8. By reason of the foregoing, 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.

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 misconduct, as is the judge who made the request. By making ex parte requests of other judges for favorable dispositions for defendants in traffic cases, and by acceding to 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.

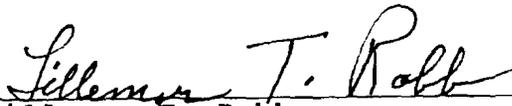
In Matter of Byrne, N.Y.L.J. April 20, 1978, vol. 179, p. 5 (Ct. on the Judiciary), the Court on the Judiciary declared that a "judicial officer who accords or requests special treatment or favoritism to a defendant in his court or another judge's court is guilty of malum in se misconduct constituting cause for

discipline." In that case, ticket-fixing was equated with favoritism, which the court stated was "wrong and has always been wrong." Id.

By reason of the foregoing, the Commission determines that respondent should be censured.

This determination constitutes the findings of fact and conclusions of law required by Section 44, subdivision 7, of the Judiciary Law.

All concur.


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

Dated: May 29, 1979
Albany, New York

APPEARANCES:

Lynch, Lynch, O'Hara & Gioeli (By Harry V. Lynch) for Respondent

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