

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

VINCENT P. SCHOLL,

a Justice of the Kirkland Town Court,
Oneida County.

Determination

BEFORE: Mrs. Gene Robb, Chairwoman
Dolores DelBello
Michael M. Kirsch
Victor A. Kovner
William V. Maggipinto
Honorable Isaac Rubin
Honorable Felice K. Shea
Carroll L. Wainwright, Jr.

The respondent, Vincent P. Scholl, a justice of the Town Court of Kirkland, Oneida County, was served with a Formal Written Complaint dated February 27, 1979, setting forth 13 charges of misconduct relating to the improper assertion of influence in traffic cases. Respondent filed an answer received March 23, 1979.

The administrator of the Commission, respondent and respondent's counsel entered into an agreed statement of facts on July 3, 1979, pursuant to Section 44, subdivision 5, of the Judiciary Law, waiving the hearing provided for by Section 44, subdivision 4, of the Judiciary Law and stipulating that the Commission make its determination on the pleadings and the facts as agreed upon. The Commission approved the agreed statement of

facts, as submitted, on July 19, 1979, determined that no outstanding issue of fact remained, and scheduled oral argument with respect to determining (i) whether the facts establish misconduct and (ii) an appropriate sanction, if any. The administrator submitted a memorandum in lieu of oral argument. Respondent submitted a letter in lieu of oral argument.

The Commission considered the record in this proceeding on August 16, 1979, and upon that record finds the following facts.

1. As to Charge I, on September 9, 1974, respondent sent a letter to Justice Michael Cienava of the Village Court of New York Mills, seeking special consideration on behalf of the defendant in People v. Arthur R. Mann, Jr., a case then pending before Judge Cienava.

2. As to Charge II, on July 14, 1976, respondent sent a letter to Justice Lee Armstrong of the Village Court of West Winfield, seeking special consideration on behalf of the defendant in People v. Steven Shaut, a case then pending before Judge Armstrong.

3. As to Charge III, on June 26, 1973, respondent reduced a charge of speeding to failure to keep right in People v. Norman R. Snider as a result of a written communication he received from Justice Robert Forsythe of the Town Court of Vernon, seeking special consideration on behalf of the defendant.

4. As to Charge IV, on April 22, 1975, respondent reduced a charge of speeding to driving with an unsafe tire and imposed an unconditional discharge in People v. Carol M. Vangura as a result of a communication he received from Investigator

Vangura, seeking special consideration on behalf of the defendant.

5. As to Charge V, on February 24, 1976, respondent reduced a charge of failure to stop at a stop sign to failure to obey traffic laws in People v. Matthew Sobieraj as a result of a written communication he received from Justice Stanley C. Wolanin of the Town Court of Whitestown, seeking special consideration on behalf of the defendant.

6. As to Charge VI, on October 12, 1976, respondent reduced a charge of speeding to driving with an inadequate muffler in People v. Edwin C. Evans as a result of a written communication he received from Justice Joseph C. Schwertfeger of the Town Court of Floyd, seeking special consideration on behalf of the defendant.

7. As to Charge VII, on May 13, 1975, respondent reduced a charge of driving to the left of pavement markings to failure to obey traffic laws in People v. Charles H. Stahl as a result of a written communication he received, seeking special consideration on behalf of the defendant.

8. As to Charge VIII, on September 23, 1975, respondent reduced a charge of speeding to driving with an unsafe tire in People v. Judith Holmes as a result of a communication he received from Trooper Marino, seeking special consideration on behalf of the defendant.

9. As to Charge IX, on August 3, 1976, respondent reduced a charge of speeding to driving with an inadequate muffler and imposed an unconditional discharge in People v. Donald C. Tully

as a result of a communication he received, seeking special consideration on behalf of the defendant.

10. As to Charge X, on April 24, 1973, respondent reduced a charge of speeding to driving with an unsafe tire in People v. Margaret A. Riley as a result of a communication he received from Trooper Wayland Smith, seeking special consideration on behalf of the defendant.

11. As to Charge XI, on August 21, 1973, respondent reduced a charge of driving with an unsafe tire in People v. Julie A. DiToma as a result of a written communication he received from Trooper Al Lonsberry, seeking special consideration on behalf of the defendant.

12. As to Charge XII, on April 8, 1975, respondent reduced a charge of speeding to driving with an unsafe tire in People v. William J. Rowlands as a result of a communication he received from Justice Michael Cienava of the Town Court of New York Mills, seeking special consideration on behalf of the defendant.

13. As to Charge XIII, on April 16, 1974, respondent reduced a charge of speeding to driving with an inadequate muffler in People v. Anthony Farouche as a result of a communication he received from Justice George Murtaugh of the Town Court of Frankfort, 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 XIII of the Formal Written Complaint are sustained, and respondent is thereby guilty of misconduct.

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, 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 Bryne, 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.

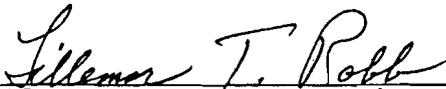
By reason of the foregoing, the Commission determines that the appropriate sanction is censure.

All concur.

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: October 11, 1979
Albany, New York

APPEARANCES:

Evans, Severn, Bankert & Peet (By Anthony T. Panzone) for Respondent

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