

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

WALTER T. CMAYLO,

a Justice of the Verona Town Court,
Oneida 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
Carroll L. Wainwright, Jr.

Respondent, a justice of the Town Court of Verona, was served with a Formal Written Complaint dated May 4, 1979, setting forth two charges of misconduct relating to the improper assertion of influence in traffic cases. Respondent filed an answer dated May 31, 1979.

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 both charges in the Formal Written Complaint, and

set a date for oral argument on the issue of an appropriate sanction. The administrator submitted a memorandum in lieu of oral argument. Respondent waived oral argument and submitted 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 February 25, 1973, respondent sent a letter to Justice Clarence Jones of the Village Court of Oriskany, seeking special consideration on behalf of the defendant in People v. Donald C. Carver, a case then pending before Judge Jones.

2. As to Charge II, on March 13, 1977, respondent sent a letter to the Henrietta Town Court, seeking special consideration on behalf of the defendant in People v. Theodore C. Murphy, a case then pending in that court.

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 and II 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

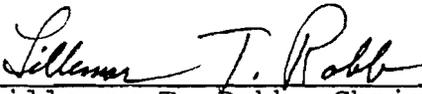
request is guilty of favoritism, as is the judge who made the request. By making ex parte requests of other judges for favorable dispositions for the defendants in traffic cases, respondent violated the rules enumerated above.

Courts in this state and other jurisdictions have found that favoritism is serious judicial misconduct and that ticket-fixing is a form of favoritism.

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

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: December 12, 1979
Albany, New York

APPEARANCES:

Francis P. Valone for Respondent

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