

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

ANTHONY G. ELLIS,

Determination

a Justice of the Altamont Town Court
and the Tupper Lake Village Court,
Franklin County.

BEFORE: Mrs. Gene Robb, Chairwoman
Honorable Fritz W. Alexander, II
David Bromberg
Honorable Richard J. Cardamone
Dolores DelBello
Michael M. Kirsch
Victor A. Kovner
William V. Maggipinto
Honorable Isaac Rubin
Carroll Wainwright, Jr.

Respondent, Anthony G. Ellis, a justice of the Town Court of Altamont, and the Village Court of Tupper Lake, Franklin County, was served with a Formal Written Complaint dated May 31, 1979, setting forth seven charges of improper influence in traffic cases. Respondent filed an answer dated October 2, 1979.

The administrator of the Commission, respondent and respondent's counsel entered into an agreed statement of facts on February 11, 1980, 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 agreed upon. The Commission approved the agreed statement of facts, as submitted, on February 26, 1980, determined that no outstanding issue of fact remained and scheduled oral argument to determine (i) whether the facts establish misconduct and (ii) an appropriate sanction, if any. The administrator submitted a memorandum and waived oral argument. Respondent did not appear for oral argument and did not submit a memorandum.

The Commission considered the record in this proceeding on April 23, 1980, and upon that record makes the following findings of fact.

1. Charge I: On or about September 8, 1975, respondent communicated with Justice Richard Lips of the Town Court of Clifton, seeking the reduction of a charge from speeding to a non-moving violation on behalf of the defendant in People v. Kathleen J. Specchio, a case then pending before Judge Lips.

2. Charge II: On or about April 12, 1975, respondent sent a letter on his judicial stationery to Justice Karl Griebisch of the Village Court of Saranac Lake, on behalf of the defendant in People v. Francis Bourdage, Jr., a case then pending before Judge Griebisch. In the letter, respondent explained to Judge Griebisch why, in respondent's opinion, the defendant was not guilty of the charges under the circumstances of the case.

3. Charge III: On or about September 19, 1975, respondent sent a letter on his judicial stationery to Justice Karl Griebisch of the Village Court of Saranac Lake, requesting the reduction of a charge from speeding to a non-moving violation on behalf of the defendant in People v. Germain D. Carriere, a case then pending before Judge Griebisch.

4. Charge IV: On or about June 23, 1976, respondent sent a letter on his judicial stationery to Justice Karl Griebisch of the Town Court of Harrietstown, requesting the reduction of a charge from speeding to a non-moving violation on behalf of the defendant in People v. Germain D. Carriere, a case then pending before Judge Griebisch.

5. Charge V: On or about October 31, 1974, respondent sent a letter on his judicial stationery to Justice Robert Radloff of the Town Court of Lake George, requesting the reduction of a charge from speeding to a non-moving violation on behalf of the defendant in People v. Theode Desmarais, a case then pending before Judge Radloff.

6. Charge VI: On or about December 29, 1975, respondent sent a letter on his judicial stationery to Justice Robert Radloff of the Town Court of Lake George, requesting the reduction of a charge from speeding to a non-moving violation on behalf of the defendant in People v. Marcel Breton, a case then pending before Judge Radloff.

7. Charge VII: On or about September 9, 1976, respondent sent a letter on his judicial stationery to Justice Thomas Haberneck of the Town Court of Newstead, requesting the reduction of a charge from speeding to a non-moving violation on behalf of the defendant in People v. Gilles Vaillancourt, a case then pending before Judge Haberneck.

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 VII of the Formal Written Complaint are sustained, and respondent's misconduct is 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 defendants in traffic cases, 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 and other states, as well as the Commission, have found that favoritism is serious judicial misconduct and that ticket-fixing is a form of favoritism.

In Matter of Byrne, 420 NYS2d 70 (Ct. on the Judiciary 1979), 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. at 71-72.

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.

Dated: June 4, 1980
New York, New York



Victor A. Kovner, Member
New York State Commission
on Judicial Conduct

APPEARANCES:

Gerald Stern (Robert H. Straus, Of Counsel) for the Commission

William J. Cade for Respondent