

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

LAWRENCE FINLEY,

a Judge of the Oneida City Court,
Madison County, and Sherrill City
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
Victor A. Kovner
William V. Maggipinto
Honorable Isaac Rubin
Honorable Felice K. Shea
Carroll L. Wainwright, Jr.

Respondent, Lawrence Finley, a judge of the City Court of Oneida in Madison County and the City Court of Sherrill in Oneida County, was served with a Formal Written Complaint dated April 30, 1979, setting forth 20 charges of misconduct. Respondent filed an answer dated May 15, 1979.

By notice dated October 9, 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 submitted an affidavit in response to the motion for summary determination. The Commission granted the motion on October 25, 1979, found respondent's misconduct established with respect to all

20 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 letter from his attorney on the issue of sanction.

The Commission considered the record in this proceeding on December 13, 1979, and upon that record makes the following findings of fact.

1. As to Charge I, on December 23, 1976, respondent reduced a charge of speeding to disorderly conduct with a motor vehicle in People v. Jerry Saunders as a result of a written communication he received from Acting Justice William F. Gleason of the Village Court of Clinton, seeking special consideration on behalf of the defendant, Judge Gleason's cousin.

2. As to Charge II, on April 1, 1975, respondent reduced a charge of speeding to "unnecessary noise-muffler" in People v. Bernard Bacon as a result of a written communication he received from Justice Michael Perretta of the Town Court of Lenox, seeking special consideration on behalf of the defendant, notwithstanding that respondent had previously made similar requests to Judge Perretta on behalf of respondent's clients and received fees from his clients in such cases.

3. As to Charge III, on August 12, 1976, respondent reduced a charge of speeding to disorderly conduct with a motor vehicle in People v. Brian Barr as a result of a written communication he received from Justice Joseph Cristiano of the Village Court of Middleville, seeking special consideration on behalf of the defendant.

4. As to Charge IV, on February 26, 1974, respondent imposed an unconditional discharge in People v. Jay Cowan as a result of a written communication he received from Justice Michael Perretta of the Town Court of Lenox, seeking special consideration on behalf of the defendant, notwithstanding that respondent had previously made similar requests to Judge Perretta on behalf of respondent's clients and received fees from his clients in such cases.

5. As to Charge V, on August 5, 1975, respondent reduced a charge of speeding to "unnecessary noise-muffler" in People v. James A. Crawford as a result of a written communication he received from Justice Michael Perretta of the Town Court of Lenox, a judge in Madison County who is permitted to practice law, seeking special consideration on behalf of the defendant, notwithstanding that respondent had previously made similar requests to Judge Perretta on behalf of respondent's clients and received fees from his clients in such cases.

6. As to Charge VI, on May 22, 1975, respondent reduced a charge of failure to yield right of way to "unnecessary noise-muffler" in People v. John Delekta as a result of a communication he received from Trooper Mike Donagan seeking special consideration on behalf of the defendant.

7. As to Charge VII, on February 23, 1977, respondent reduced a charge of speeding to "unnecessary noise-muffler" in People v. Arthur C. Keller as a result of a written communication he received from Justice Malcolm W. Knapp of the Town Court of Lafayette, seeking special consideration on behalf of the defendant.

8. As to Charge VIII, on July 12, 1973, respondent reduced a charge of speeding to driving with an inadequate muffler in People v. Jerome Miller as a result of a written communication he received from Justice Donald F. Havens of the Town Court of Brookfield, seeking special consideration on behalf of the defendant.

9. As to Charge IX, on August 8, 1976, respondent reduced a charge of speeding to failure to obey a traffic signal in People v. Raymond Brown as a result of a written communication he received from Justice Thomas F. Malecki of the Village Court of Vernon, seeking special consideration on behalf of the defendant.

10. As to Charge X, on October 21, 1976, respondent reduced a charge of speeding to "unnecessary noise-muffler" in People v. Charles Teeps as a result of a written communication he received from Justice Thomas F. Malecki of the Village Court of Vernon, seeking special consideration on behalf of the defendant.

11. As to Charge XI, on November 30, 1976, respondent reduced a charge of speeding to "unnecessary noise-muffler" in People v. Cynthia Thurston as a result of a written communication he received from Justice Michael Perretta of the Town Court of Lenox, seeking special consideration on behalf of the defendant, notwithstanding that respondent had previously made similar requests to Judge Perretta on behalf of respondent's clients and received fees from his clients in such cases.

12. As to Charge XII, on November 7, 1974, respondent reduced a charge of driving to the left of pavement markings to "unnecessary noise-muffler" in People v. Debra L. Valerio as a

result of a written communication he received from Trooper T.S. Santora, seeking special consideration on behalf of the defendant.

13. As to Charge XIII, on May 22, 1975, respondent reduced a charge of speeding to "unnecessary noise-muffler" in People v. Carl Webster as a result of a written communication he received from Justice Michael Perretta of the Town Court of Lenox, seeking special consideration on behalf of the defendant, notwithstanding that respondent had previously made similar requests to Judge Perretta on behalf of respondent's clients and received fees from his clients in such cases.

14. As to Charge XIV, on February 10, 1977, respondent reduced a charge of speeding to disorderly conduct with a motor vehicle in People v. David E. Pianka as a result of a communication he received from Army Carinci, seeking special consideration on behalf of the defendant.

15. As to Charge XV, on March 13, 1975, respondent reduced a charge of speeding to "unnecessary noise-muffler" in People v. John M. Sroka as a result of a written communication he received from Justice Stanley C. Wolanin of the Town Court of New York Mills, seeking special consideration on behalf of the defendant.

16. As to Charge XVI, on September 25, 1973, respondent reduced a charge of speeding to driving with an inadequate muffler and imposed an unconditional discharge in People v. Marion Barrett as a result of a written communication he received from Justice Carlton M. Chase of the Village Court of Chittenango, seeking special consideration on behalf of the defendant.

17. As to Charge XVII, on May 13, 1976, respondent reduced a charge of speeding to disorderly conduct with a motor vehicle in People v. Timothy Samson as a result of a communication he received from Justice Thomas Malecki of the Village Court of Vernon, seeking special consideration on behalf of the defendant.

18. As to Charge XVIII, on June 20, 1974, respondent sent a letter which identified him as a Judge of the Oneida City Court to Justice Federspiel of the Town Court of Pembroke, Genesee County, on behalf of the defendant in People v. Jesse H. Ramage, and received \$50 from the defendant as a legal fee.

19. As to Charge XIX, from 1967 to 1978, respondent, in the regular conduct of his legal practice, used stationery which identified him as a Judge of the Oneida City Court.

20. As to Charge XX, on December 6 and 8, 1977, in connection with People v. Karl Kroth, a case then pending before respondent in which the defendant was charged with driving while intoxicated and driving with more than .10% blood alcohol, respondent spoke by telephone with William Kroth, the defendant's father, and stated in substance:

- (1) that it would be in the defendant's best interest to plead guilty to a reduced charge of driving while ability impaired; and
- (2) that defendant's lawyer, Lewis Hoffman, agreed with this assessment of the case.

On January 11, 1978, respondent granted defendant's motion to dismiss the case of People v. Karl Kroth in the interest of justice, in response to the defendant's claim that respondent,

in his two conversations with William Kroth, had indicated prejudgment of the case and had improperly interfered with the defendant's relationship with his attorney.

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), 33.3(a)(4) and 33.3(c) of the Rules Governing Judicial Conduct, Canons 1, 2, 3A and 3C of the Code of Judicial Conduct, Canons 4 and 31 of the Canons of Judicial Ethics, and permitted a violation of Section 33.5(f) of the Rules Governing Judicial Conduct and Section 839.5 of the Rules of the Appellate Division, Third Judicial Department. Charges I through XX of the Formal Written Complaint are sustained, and respondent's misconduct is established.

Respondent's misconduct in the matters herein falls into three categories: (i) acceding to special influence on behalf of defendants in traffic cases, (ii) identifying himself as a judge on the stationery he used in the regular conduct of his legal practice and (iii) involving himself in the preparation of the defendant's case in a particular matter.

As to the traffic cases, the Commission concludes that 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 granting ex parte requests for favorable dispositions for defendants in traffic cases, from judges and others in a special position to influence him, 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, 420 NYS2d 70 (Ct. on the Judiciary, 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., at 71-72.

As to his practice of identifying himself as a judge on the stationery used in his private law practice, respondent's conduct was clearly improper. Canon 31 of the Canons of Judicial Ethics cautions a judge who is permitted to practice law to "be scrupulously careful to avoid conduct in his practice whereby he utilizes or seems to utilize his judicial position to further his professional success." By his conduct, respondent in effect used his judicial office and title in pursuit of entirely private ends. He thereby diminished public confidence in the integrity and independence of the judiciary. Respondent knew or should have known that routinely identifying himself as a judge in his law practice could have an intimidating effect on those with whom he dealt and might otherwise enure to his benefit.

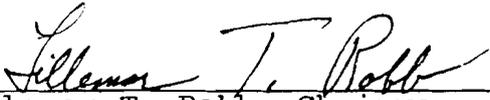
As to his conduct in People v. Kroth, respondent initiated an ex parte communication with the defendant's father, in violation of Section 33.3(a)(4) of the Rules Governing Judicial Conduct. His advising the defendant's father as to how the defendant should plead in this case was improper and interfered with the relationship between defendant and defense counsel. Furthermore, by virtually acting as a lawyer in the proceeding, respondent compromised the impartial role required of a presiding judge and effectively created a climate in which he should have disqualified himself, inasmuch as "his impartiality might reasonably be questioned" (Section 33.3[c] of the Rules).

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: February 11, 1980
Albany, New York

APPEARANCES:

Gerald Stern (Jeanne A. O'Connor, Of Counsel) for the Commission

Ashmead & Humphreys (By Hugh C. Humphreys) for Respondent