

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

HENRY B. WRIGHT,

a Justice of the Pavilion Town Court,
Genesee County.

Determination

BEFORE: 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.

Respondent, a justice of the Town Court of Pavilion,
Genesee County, was served with a Formal Written Complaint dated
July 18, 1979, setting forth 14 charges relating to the improper
assertion of influence in traffic cases. Respondent filed an
answer dated August 11, 1979.

By notice dated October 25, 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
November 13, 1979, dismissed Charge XIII of the Formal Written
Complaint, found respondent's misconduct established with respect
to the remaining 13 charges, 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, in a letter dated November 24, 1979, waived oral argument, and did not submit a memorandum.

The Commission considered the record in this proceeding on December 13, 1979, and January 24, 1980, and upon that record makes the following findings of fact.

1. Charge I: On April 14, 1973, respondent reduced a charge of speeding to driving with an inadequate muffler in People v. Charles R. Kahl as a result of a written communication he received from Justice Sebastian Lombardi of the Town Court of Lewiston seeking special consideration on behalf of the defendant.

2. Charge II: On March 25, 1973, respondent reduced a charge of speeding to driving with an unsafe tire in People v. Raymond L. Mensch as a result of a written communication he received from Henry E. Groff, Chief of Police of Boyertown, Pennsylvania, seeking special consideration on behalf of the defendant.

3. Charge III: On June 27, 1973, respondent reduced a charge of speeding to driving with an unsafe tire in People v. Albert J. Minicucci as a result of a written communication he received from Justice Sebastian Lombardi of the Town Court of Lewiston seeking special consideration on behalf of the defendant.

4. Charge IV: On July 20, 1973, respondent reduced a charge of speeding to driving with an unsafe tire in People v. Edward R. Switzer as a result of a written communication he received from Justice Sebastian Lombardi of the Town Court of Lewiston seeking special consideration on behalf of the defendant.

5. Charge V: On April 27, 1976, respondent reduced a charge of speeding to driving with an unsafe tire in People v. Louis S. Chickos as a result of a communication he received from a member of the State Police seeking special consideration on behalf of the defendant.

6. Charge VI: On March 27, 1973, respondent reduced a charge of speeding to driving with an unsafe tire in People v. Robert L. Dilcher as a result of a communication he received from a Justice of the Town Court of Elba seeking special consideration on behalf of the defendant.

7. Charge VII: On July 3, 1973, respondent reduced a charge of speeding to driving with an inadequate muffler in People v. John C. Hooker based upon his friendship with the defendant and not on the merits of the case.

8. Charge VIII: On September 13, 1973, respondent reduced a charge of speeding to failure to keep right in People v. Thomas Hooker as a result of a communication he received from Justice Sebastian Lombardi of the Town Court of Lewiston seeking special consideration on behalf of the defendant.

9. Charge IX: On September 15, 1975, respondent accepted the forfeiture of bail in lieu of further prosecution of a charge of speeding in People v. Roger D. Hurlbut as a result of a communication he received from a member of the State Police seeking special consideration on behalf of the defendant.

10. Charge X: On January 6, 1973, respondent reduced a charge of speeding to driving with an unsafe tire in People v. Angus W. Miller based upon the defendant's status as a state park police officer.

11. Charge XI: On April 16, 1973, respondent reduced a charge of speeding to driving with an unsafe tire in People v. Dennis N. Miller based upon the status of the defendant's brother as a state police officer.

12. Charge XII: On April 17, 1973, respondent reduced a charge of speeding to driving with an unsafe tire in People v. F.X. Recktenwald based upon the status of the defendant's two brothers as state police officers.

13. Charge XIV: On November 22, 1976, respondent reduced a charge of speeding to driving with an unsafe tire in People v. Richard M. Whalen based upon respondent's friendship with the defendant and the defendant's status as a candidate for an appointment in the Genesee County Sheriff's Department.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Canons 1, 2 and 3A of the Code of Judicial Conduct, Sections 33.1, 33.2, 33.3(a)(1) and 33.3(a)(4) of the Rules Governing Judicial Conduct and Canons 4, 5, 13, 14 and 34 of the Canons of Judicial Ethics. Charges I through XII and Charge XIV 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 granting ex parte requests from judges and other persons of influence for favorable dispositions for defendants

in traffic cases, and by rendering such favorable dispositions based upon his friendship with the defendants, or the fact that either the defendant or the defendant's relatives were state police officers, respondent violated the Rules enumerated above, which read in part as follows:

Each 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.

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: April 1, 1980
Albany, New York

APPEARANCES:

Gerald Stern (Richard Granofsky, Of Counsel) for the Commission
Henry B. Wright, Respondent Pro Se